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सं. 8] नई दिल्ली, फरवरी 19—फरवरी 25, 2017, शनिवार/माघ 30—फाल्गुन 6, 1938

No. 8] NEW DELHI, FEBRUARY 19—FEBRUARY 25, 2017, SATURDAY/MAGHA 30—PHALGUNA 6, 1938

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके।
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(राजस्व विभाग)

(केंद्रीय प्रत्यक्ष कर बोर्ड)

नई दिल्ली, 21 फरवरी, 2017

का.आ. 398.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 138 की उपधारा (2) के तहत प्रदत्त शक्तियों का प्रयोग करते हुए केंद्र सरकार, सभी सुसंगत कारकों पर विचार करते हुए, एतद्वारा, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग (केंद्रीय प्रत्यक्ष कर बोर्ड) की अधिसूचना, जिसे का.आ. 576(अ), दिनांक 23 मई, 2003 के तहत भारत के राजपत्र के भाग II, खण्ड 3, उपखण्ड (ii) में प्रकाशित किया गया था, में और आगे निम्नलिखित संशोधन करती है, यथा:-

उक्त अधिसूचना में, परंतुक में उपवाक्य (ii) में शब्द और अंक, “धारा 138 के अंतर्गत समय-समय पर जारी अधिसूचनाओं” के स्थान पर शब्द, कोष्ठक और अंक, “इस अधिनियम की धारा 138 की उपधारा (1) के प्रावधानों” को प्रतिस्थापित किया जाएगा और इनके लिए यह माना जाएगा कि ये 23 मई, 2003 से प्रतिस्थापित हुए हैं।

[अधिसूचना संख्या 12/2017/फा.सं. 225/120/2016-आईटीए. II]

रोहित गर्ग, निदेशक-आईटीए. II, सीबीडीटी

स्पष्टीकरण ज्ञापन अनुबंध में संलग्न है।

नोट : प्रधान अधिसूचना को अधिसूचना का.आ. 576(अ), दिनांक 23 मई, 2003 के तहत भारत के राजपत्र के भाग II, खण्ड 3, उपखण्ड (ii) में प्रकाशित किया गया था और इसमें अभी तक कोई संशोधन नहीं किया गया है।

अनुबंध

स्पष्टीकरण ज्ञापन

अधिसूचना संख्या 137, दिनांक 23.05.2003, का.आ. 576(अ), जिसे केंद्र सरकार ने आयकर अधिनियम, 1961 (इस अधिनियम) की धारा 138 (2) के अंतर्गत प्रदत्त शक्तियों का प्रयोग करते हुए जारी किया था, के अनुसार आयकर प्राधिकारियों द्वारा किसी व्यक्ति को, कोई जानकारी/कागजात/दस्तावेज दिया जाना निषिद्ध है। जहां कि उक्त अधिसूचना में किसी व्यक्ति/प्राधिकारी को कोई जानकारी/दस्तावेज दिए जाने पर सामान्यतः प्रतिवंध लगाया गया है वहीं इसके दो अपवाद भी दिए गए हैं जिसके तहत कोई जानकारी उपलब्ध कराई जा सकती है, पहला अपवाद, डीजीआईटी (सिस्टम) के द्वारा दी जाने वाली जानकारी से संबंधित है जो कि पैन से संबंधित दस्तावेज या आंकड़े, कर कटौती लेखा संख्या और करदाताओं के आयकर दस्तावेज के कम्प्यूटरीकरण के बारे में हो सकती है। दूसरा अपवाद, इस अधिनियम की धारा 138 के अंतर्गत समय-समय पर जारी की गई अधिसूचनाओं के अनुसार जानकारी को उजागर करने से संबंधित है।

जैसाकि दिनांक 23.05.2003 की अधिसूचना इस अधिनियम की धारा 138 की उपधारा (2) के अंतर्गत जारी की गई थी और इसकी शुरूआत अध्यारोही उपवाक्य (नॉन ओबस्टैटिक क्लॉज) से होती है अतः इसका यह अर्थ निकलता है कि जहां इस अधिनियम की धारा 138(1)(a)(i) और धारा 138 (1)(b) के अंतर्गत किसी जानकारी को उजागर करना निषिद्ध है वहीं पर केंद्र सरकार द्वारा केवल इस अधिनियम की धारा 138(1)(a)(ii) के अंतर्गत अधिसूचित प्राधिकारियों/ व्यक्तियों को ऐसी जानकारी प्रदान की जा सकती है। अतः कुछ स्टेक होल्डरों को यह डर था कि उक्त अधिसूचना इस अधिनियम की धारा 138 की उपधारा (1)(a)(i) और (1)(b) में उल्लिखित प्राधिकारियों के अधिकारों पर प्रतिवंध लगाती है जिसके द्वारा ये प्रावधान वस्तुतः निषिक्रिय हो जाते हैं।

अतः उक्त अधिसूचना की व्याख्या में किसी प्रकार के भ्रम को दूर करने के लिए केंद्र सरकार ने भूतलक्ष्यी प्रभाव से यह स्पष्ट करने का निर्णय लिया है कि दिनांक 23.05.2003 की अधिसूचना के परंतुक का उपवाक्य (ii) का अर्थ यह होगा कि किसी भी जानकारी का प्रकटीकरण इस अधिनियम की धारा 138(1) के प्रावधानों के अनुसार ही समय-समय पर किया जाएगा।

दिनांक 23.05.2003 की अधिसूचना में किये जाने वाले उपर्युक्त आंशिक संशोधन से दिनांक 23.05.2003 की इस अधिसूचना के द्वारा लगाया गया प्रतिवंध हट जाता है और यह इस अधिनियम की धारा 138 के अनुरूप हो जाता है।

**MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)**

New Delhi, the 21st February, 2017

S.O. 398.—In exercise of the powers conferred by sub-section (2) of section 138 of the Income-tax Act, 1961 (43 of 1961), the Central Government, having regard to all the relevant factors, hereby makes the following amendment in the notification of Government of India in the Ministry of Finance, Department of Revenue (Central Board of Direct Taxes) published in the Gazette of India, Part II, Section 3, Sub-section (ii) *vide* number S.O. 576(E), dated the 23rd of May, 2003, namely:-

In the said notification, in the proviso, in clause (ii), for the words and figures, “*the notifications issued under section 138 from time to time*”, the words, brackets and figures, “*provisions of sub-section (1) of section 138 of the Act*” shall be substituted and shall be deemed to have been substituted with effect from 23rd May, 2003.

[Notification No. 12/2017/F.No. 225/120/2016-ITA. II]

ROHIT GARG, Director-ITA.II, CBDT

The Explanatory Memorandum as appended in Annexure.

Note : The Principal notification was published in the Gazette of India, Part II, Section 3, Sub-section (ii) *vide* notification S.O. 576(E) dated the 23rd May, 2003 and the same has not been amended so far.

Annexure**Explanatory Memorandum**

Notification No. 137 dated 23.05.2003 SO(E)-576 issued by the Central Govt., in exercise of its powers under section 138(2) of the Income-tax Act, 1961 ('Act'), prohibited providing information/record/ document to any person or authority by the Income-tax Authorities. While the said notification prescribed a general prohibition in furnishing of information/documents before any person/authority, two exceptions were, however, mentioned where the information can be made available. The first exception pertained to providing information by DGIT (Systems) in respect of records or data related to PAN, tax deduction account number and computerization of income-tax records of taxpayers. The second exception was related to disclosure of information in accordance with notifications issued under section 138 of the Act from time to time.

As notification dated 23.05.2003 was issued under sub-section(2) of Section 138, which starts with a non-obstante clause, the implication appeared to be that the information could be provided only to the authorities/ persons which are so notified u/s 138(1)(a)(ii) of the Act by the Central Government while disclosure of information under section(s) 138(1)(a)(i) and section 138(1)(b) of the Act was prohibited. Therefore, an apprehension was raised by some of the stakeholders that the said notification puts restriction on the powers of the authorities mentioned in sub sections (1)(a)(i) & (1)(b) of section 138 of the Act, thereby, making these provisions virtually redundant.

Therefore, in order to remove any ambiguity in interpretation of the said notification, Central Government, with retrospective date, has decided to clarify that clause (ii) of the proviso in the notification dated 23/05/2003 would mean the disclosure of any information in accordance with the provisions of section 138(1) from time to time.

The above partial amendment in notification dated 23.05.2003, would, in effect, remove the restraint placed by the notification dated 23.05.2003 and harmonize it with provisions of section 138 of the Act.

रेल मंत्रालय

(रेलवे बोर्ड)

नई दिल्ली, 10 फरवरी, 2017

का.आ. 399.—रेल मंत्रालय (रेलवे बोर्ड), राजभाषा नियम 1976 (संघ के शासकीय प्रयोजनों के लिए प्रयोग) के नियम 10 के उपनियम (2) और (4) के अनुसरण में कोंकण कार्पोरेशन लिमिटेड के अधीन मडगांव रेलवे स्टेशन कार्यालय, जहां 80 प्रतिशत से अधिक अधिकारियों/कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करता है।

[सं. हिंदी 2015/रा.भा.1/12/2]

के. पी. सत्यानन्दन, निदेशक (राजभाषा)

MINISTRY OF RAILWAYS

(RAILWAY BOARD)

New Delhi, the 10th February, 2017

S.O. 399.—Ministry of Railways (Railway Board) in pursuance of Sub-rule (2) and (4) of Rule 10 of the Official Language Rules, 1976 (use for the Official purposes of the Union) hereby, notify the Madgaon Railway Station Office of Konkan Railway Corporation Limited, where 80% or more Officers/Employees have acquired the working knowledge of Hindi.

[No. Hindi 2015/O.L.-1/12/2]

K. P. SATHYANANDAN, Director (OL)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 15 फरवरी, 2017

का.आ. 400.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओएनजीसी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 642/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.02.2017 को प्राप्त हुआ था।

[सं. एल-30012/45/1995-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 15th February, 2017

S.O. 400.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 642/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of M/s. ONGC Limited and their workmen, received by the Central Government on 15.02.2017.

[No. L-30012/45/1995-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 29th November, 2016

Reference: (CGITA) No. 642/2004

The Officer on Special Duty (Projects),
ONGC Ltd.,
Ankleshwar – Gandhar Project,
Ankleshwar (Gujarat)

...First Party

V/s

Shri Pravinbhai B. Hansoti,
At and Post Sajod,
Tal. Ankleshwar,
Bharuch (Gujarat) – 393020

...Second Party

For the First Party : Shri C.S. Naidu, Associates

For the Second Party : Shri Sudhir Shah

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-20040/45/95-IR(Coal-I) dated 03.09.1996 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDE

“Whether the demand of Shri Pravinbhai B. Hansoti that he was employed by the management of Oil & Natural Gas Commission Ltd. and his services were illegally terminated w.e.f. 01.10.1991 is justified and legal? If so, to what relief is Shri Pravinbhai B. Hansoti entitled?”

1. The reference dates back to 03.09.1996. The second party submitted the statement of claim Ext. 3 on 24.11.1996. The first party submitted the written statement Ext. 15 on 25.01.2001. The second party workman was examined on

14.07.1997 but he did not prefer to appear for cross-examination even after giving a number of opportunities till 15.12.2015. On 15.12.2015, the second party was given a last opportunity to appear to give evidence for cross-examination but to no avail.

2. Thus it appears that the second party is not willing to prosecute the case. Therefore, the reference is disposed of in the absence of the evidence of the second party with an observation as under: "the demand of Shri Pravinbhai B. Hansoti that he was employed by the management of Oil & Natural Gas Commission Ltd. and his services were illegally terminated w.e.f. 01.10.1991 is unjustified and illegal."

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 15 फरवरी, 2017

का.आ. 401.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स जैट एअरवेज इंडिया प्रा. लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 54/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.02.2017 को प्राप्त हुआ था।

[सं. एल-11012/10/2005-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 15th February, 2017

S.O. 401.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of M/s. Jet Airways (India) Pvt. Limited and their workmen, received by the Central Government on 15.02.2017.

[No. L-11012/10/2005-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 23rd November, 2016

Reference: (CGITA) No. 54/2005

1. The Area Manager,
Jet Airways (India) Private Limited,
Ratnabh Complex, Near Income Tax Office,
Opp. Gujarat Vidhyapeeth, Ashram Road,
Ahmedabad (Gujarat)
2. The Mahaprabandak Personal,
Jet Airways (India) Private Limited,
Human Resource, 41-42, Makair Chamber – 111, Nariman Point,
Mumbai (Maharashtra) – 400021

...First Party

V/s

Shri Babubhai Poojabhai Solanki,
Block No. 30/438, Bhadreshwar Gujarat Housing Board,
Sadaar Nagar,
Ahmedabad (Gujarat) – 302475

...Second Party

For the First Party : Shri H.M. Thakkar
For the Second Party : Shri Y.S. Pathan

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-11012/10/2005-IR(C-I) dated 02.06.2005 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of M/s. Jet Airways (India) Pvt. Ltd. in dismissing Shri Babubhai Solanki, attendant-cum-driver from service w.e.f. 16.12.2003 is fair and legal? If not, to what relief is the workman entitled?”

1. The reference dates back to 02.06.2005. The second party submitted the statement of claim Ext. 3 on 27.11.2005. The first party submitted the written statement Ext. 8 on 09.03.2006. Since then the second party has been absent. Fresh notice was issued to the second party to appear on 29.06.2011 but the second party did not prefer to appear and has failed to give evidence.

2. Therefore, it appears that the second party has not been willing to prosecute the reference. Thus the reference has been disposed of for want of evidence of the second party as under – “the action of the management of M/s. Jet Airways (India) Pvt. Ltd. in dismissing Shri Babubhai Solanki, attendant-cum-driver from service w.e.f. 16.12.2003 is fair and legal.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 15 फरवरी, 2017

का.आ. 402.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओएनजीसी लिमिटेड के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 139/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.02.2017 को प्राप्त हुआ था।

[सं. एल-30012/11/1998-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 15th February, 2017

S.O. 402.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 139/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of M/s. ONGC Limited and their workmen, received by the Central Government on 15.02.2017.

[No. L-30012/11/1998-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 26th December, 2017

Reference: (CGITA) No. 139/2004

The Group General Manager (P),
ONGC Ltd., Ahmedabad Project, Avani Bhavan,
Chandkheda,
Ahmedabad (Gujarat) – 380001

...First Party

V/s

The General Secretary,
Gujarat Petroleum Employees Union,

434/46, Gandhivas, Koba Road,
Sabarmati,
Ahmedabad (Gujarat) – 380001

...Second Party

For the First Party : Shri K.V. Gadhia
For the Second Party : Shri V.J. Patel

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/11/1998-IR(C-I) dated 21.12.1998 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of Gujarat Petroleum Employees Union, Ahmedabad regarding Tekha Employees Shri Rabri Somabhai Remanbhai and Shri Rabri Baldevbhai Tejabhai be treated as direct employees of ONGC is legal?” If yes then the termination of their services w.e.f. 13.08.1996 is legal and justified? If no then what relief they are entitled to?”

1. The reference dates back to 21.12.1998. The second party submitted the statement of claim Ext. 11 on 11.03.2003. The first party submitted the written statement Ext. 12 on 13.09.2003. Since then the second party has been absent and has also refrained to lead evidence. Thus it appears that the second party is not willing to prosecute the reference.

2. Therefore, the reference is disposed of with the observation as under: “the demand of Gujarat Petroleum Employees Union, Ahmedabad regarding Tekha Employees Shri Rabri Somabhai Remanbhai and Shri Rabri Baldevbhai Tejabhai be treated as direct employees of ONGC is not legal.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 15 फरवरी, 2017

का.आ. 403.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओएनजीसी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 655/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.02.2017 को प्राप्त हुआ था।

[सं. एल-30012/33/1997-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 15th February, 2017

S.O. 403.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 655/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of M/s. ONGC Limited and their workmen, received by the Central Government on 15.02.2017.

[No. L-30012/33/1997-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 6th January, 2017

Reference: (CGITA) No. 655/2004

Reference: (ITC) No. 09/1998

1. The Dy. General Manager
Central Workshop, ONGC Limited, Makarpura Road,
Baroda (Gujarat)
2. City Transport Company,
Shakil Bhavan, Vadi Vadi, Raopura, B/h. Raopura Tower,
Baroda (Gujarat) ...First Party

V/s

Its workmen employed under it
Through General Secretary,
Baroda Mazdoor Sabha,
Shram Sadan, Raopura,
Baroda (Gujarat) ...Second Party

For the First Party : Sh. K.V. Gadhia & Sh. M.K. Patel

For the Second Party : Akhil Gujarat General Mazdoor Sangh & K.V. Vyas, Advocate

AWARD

The Government of India/ Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/33/97/IR-(C-I) dated: - 24/04/1998 referred the dispute for adjudication to the Industrial Tribunal Baroda and subsequently thesaid reference is transferred to this Tribunal in respect of the matter specified in the schedule:

SCHEDULE

“Whether the demand of 11, workmen (given below) for reinstatement and absorption in the services of ONGC Ltd. As regular employee with continuity of original position and all consequential benefits of qualification and past service, etc. are legal, proper and justified? If so, to what relief are these workmen entitled and what other direction are necessary in the matter?”

Name of the Workmen

1. Shri Rajendra P. Patel	2. Shri Raman Chamara Harijan
3. Shri Kanti Harijan Jaisingh	4. Shri Kishan Saboor Harijan
5. Shri Kalu Gambhir Harijan	6. Shri Babu Kalidas Harijan
7. Shri Dinesh Ishwar Harijan	8. Sh. Kanti Mogan Harijan
9. Shri Dhanpat Harphul Valmiki	10. Shri Moti Madhav Harijan
11. Shri Nagin Mohan Harijan	

1. After the reference by the appropriate government, the Hon'ble High Court has issued hearing notice to the respective parties and in pursuance to the same parties to the reference appeared before Hon'ble Tribunal and submitted their pleading before the Tribunal. Second party union has filed its statement of claim Ex. 4 wherein the union stated that the concerned persons have been working with the first party in Central Workshop Vadodara as sweeper. They further stated in Para 1 of the statement of claim that the workmen mentioned in the schedule annexed to the statement of claim have been working at central workshop Vadodara from their initial entry as a sweeper and at present also discharging duties as sweeper. They have further stated that as per the notification dated 08.12.1976 post of sweeper is in prohibited category and as per the notification dated 08.03.1994 peon, telephone operator etc. have been in prohibited category. They have further stated that they have filed the SCA No. 6936/97 before the Hon'ble High Court wherein the Hon'ble High Court ordered the parties to maintain status quo. They have stated that the regular employees of the ONGC are getting about five times more wages than what the employees of contractors are getting. They have further stated that they are entitled to become regular employees of the ONGC and are also entitled to get all requisite benefits which regular employees of ONGC are getting. They have prayed that they ought to declare the listed persons/workmen as employees of the ONGC from the date of their joining.

2. The first party ONGC has filed its written statement vide Ex. 40 and 41. In the said written statement, the first party has denied the averments made in the statement of claim by the union and in Para 20 of the said written statement submitted a true facts wherein the first party stated that the ONGC has statutory body and has its own rules and regulation relating to recruitment, promotion and other service condition for its employee which have statutory force. Hence all appointments are to be made only in accordance with R & P of the First Party ONGC. Even casual/contingent hands are to be appointed and are to be issued appointment letters as per the administrative instruction of the ONGC. The first party has further stated that none of the 11 workmen listed in the terms of reference

appointed as per the R&P and hence they are not the workmen of ONGC. The first party has further stated that the 11 person in whose respect the dispute has been raised by the Union are not the workmen as define u/s 2(s) of the I.D. Act. ONGC has given certain miscellaneous and sundry jobs to contractors on contract after following prescribed procedure. These jobs are not constant or perennial in nature. The ONGC is registered under the CLRA Act 1970 and contractor is having the license as prescribed under the Act. The contract between the ONGC and contractor is genuine and not sham contract as stated by the second party Union. The ONGC has further stated that the selection, supervision, direction, control and discipline of the contract workers are solely executed by the contractors. There is no relation of command and obedience between ONGC and contract workers. There is no relation of master and servant exists between the concerned contractual workmen and the ONGC. The ONGC has further stated that the union is not entitled to get any relief as prayed for and pray for dismissal of reference.

3. The Second party union has filed Interim Relief application vide Ex.-8 interalia prayed that the services of the concerned workmen should not be terminated. The Tribunal has earlier granted the interim relief and after hearing the parties confirm the same till final disposal of the reference. The second party has examined three witnesses namely Rajendra Patel vide Ex-18, Shri Ramanbhai Harijan Vide Ex.-33 and Shri Kantibhai J. Harijan vide Ex.-48 whereas the first party No. 1 ONGC has examined Shri Jakirali Mohammad Miya Saiyad Sr. H.R Executive vide Ex.-57. Over and above the oral evidences the respective party has produced the documentary evidence also. The second party has produced documentary evidence vide Ex.-15, Ex.-17, Ex.-52 and Ex.-60 whereas the first party ONGC has produced documents vide Ex.-38, Ex.-42, and Ex.-56.

The second party Union has examined one Shri Rajendra Patel vide Ex. 18 wherein he has stated in his chief that working with the first party w.e.f. 20.06.1991 initially he joined as a peon. He has also stated in his chief that he was being paid the contractor for sweeping work done by him. ONGC used to paid to the contractor and contractor paid to them. In cross-examination he has stated that he joined with the contractor namely Kalyan builders and he has further stated that he has carryout the work which was assigned by the contractor, salary was paid by the contractor. If he wants to proceed on leave he has to inform the contractor. He has specifically stated that he has not joined the Kalyan builder as party and also M/s. Shri Transport as a party. Contractor has not given any appointment letter. The union has examined another person Shri Ramanbhai Harijan vide Ex.-33. In his chief he has stated that he was working since 1982 as sweeper. In his cross-examination he has admitted that his presence was marked in contractor's muster. He has not applied for job in ONGC. The second party has examined one more contractual employee namely Shri Kantibhai J. Harijan vide Ex.-48 wherein Chief examination he has stated that all 11 persons involved in reference were discharging duties as sweeper. He has stated that in 1989 Kalyan Builders was the contractor. He has stated that the 11 persons involved in the reference were discharging the duties same as he has been performing. After the completion of contract of Kalyan Builders, Contract M/s. Shri Transport got the contractor. He has stated that the supervisor of the M/s. Shri Transport used to supervise and salary was also paid to them by Shri Transport. He has stated in his chief that Mr. Rajendra Patel was doing the work of peon. He has stated in his chief that they have been continued in job on account of court's order. He has stated that the contractor used to deduct the P.F. They have to work in residential colony. In his cross-examination he has stated that he had no documentary evidence to show that he joined in 1983-84. He has specifically admitted that ONGC has not given any appointment letter nor contractor has given any appointment letter. He has admitted that there was no advertisement published in news paper nor he had made any application for job. He was not interviewed. He has admitted that he was getting the salary on actual work basis in other word he was getting the salary as daily rated. He has admitted in cross-examination Maharshi Enterprise deduct the P.F. He has further admitted that Kalu Gambhir & Moti Madhav (Sr. No. 5 & 10 of the list) has expired.

The second party has produced the documents and most of the documents are the wage slip, identity card and PF slip which are issued by the respective contractors.

First party No. 1 has produced document vide Ex.-38 wherein the corporation has produced the license of the Shri Transport Contractor registration of the ONGC and agreement with the contractor. Vide Ex.- 42 the first party has produced the letter written to Shri Transport, vide Exh.-56 corporation has produced another list of documents, Ex. - 56/1 is a letter written by Shri Transport to DGM interalia stated that the Second party Shri Rajendra Patel not doing any work and being paid idle wages as he was continued in job on account of protection granted by the Court. Ex.56/2 is registration of the ONGC and Ex.-56/3 is agreement with Shri Transport. The second party has further submitted document list vide Ex. -60. Ex. -60/1 is the certificate issued by the Shri Transport - contractor to Shri Rajendra Patel. Vide Ex-60/2 given by one Shri S.P. Desai A.O. in the said certificate Mr. Desai has specifically stated that he has issued a certificate to Shri Rajendra Patel of his personnel non official capacity and not on behalf of the organization. Therefore in eye of law this certificate does not have any evidentiary value as it is obtained by Shri Patel tactfully to misguide the court. Ex.-60/3 given by the reliable men power services - Contractor he has stated that Shri Patel was working as clerk and specifically stated that he was appointed due to interim order of the Industrial Tribunal.

4. Vide Ex.-57 the first party has examined one Shri Jakirali Mahamadmiya Siayad Sr. H.R. Executive in his chief he has stated that the person involved in the reference were deployed by the contractor, ONGC has not deployed them.

He has stated that all the contractual persons were continuing in job on account of status quo / protection granted by the Tribunal. He has further stated that the listed persons were never appointed by the ONGC they were never paid by the ONGC, they were never supervised and controlled by the ONGC. There is no relationship of Master and Servant between the contractual workmen and the ONGC. They were not appointed as per the recruitment rules of the corporation. In the examination in chief witness, has stated that as per the information gathered from the contractor Shri Patel was not doing any work and being paid idle wages. The same was not controverted by the either side meaning thereby the same is unchallenged and same to be believed as true. In cross-examination the second party has not contravened the saying of the witness.

5. The second party union has well as the first party No. 1 ONGC has submitted their written arguments vide Ex. 62 and 64 respectively. Out of 11 workmen two workmen i.e. Sr. No. 5 and 10 of the terms of reference were expired and hence now the present reference is qua for 9 workmen only. Out of 9 workmen Akhil Gujarat General Mazdoor Sangh is representing Shri Rajendra P. Patel Sr. No. 1 and rest of the 8 workmen were represented by K.V. Vyas, advocate who had adopted the written argument filed by the Akhil Gujarat General Mazdoor Sangh vide Ex-63.

6. From the pleadings and oral as well as documentary evidences of the parties following issues are framed.

ISSUES

- i. Whether the concerned workmen are entitled to get absorption with the ONGC?
- ii. Whether the concerned workmen are entitled to all consequential benefits etc. at par with employees of the ONGC?
- iii. What orders award?

Issue No. i, ii and iii:-

Since the aforesaid three issues are interconnected, therefore, they are taken up together.

7. As per the pleading of the second party and the terms of reference the present matter is for regularization / absorption of listed sweepers. The Government has referred the matter for 11 contractual persons who are working as a sweeper under the contractor. The said facts emerges from the SCA filed before the Hon'ble High Court by this 11 contractual persons being SCA No. 6936/1997 wherein it is stated that the 11 concerned persons are working as a sweeper through contractor and the Hon'ble High Court has protected their services for six months and directed the Tribunal to decide the matter expeditiously, vide High Court's order dated 01.02.1999.

8. During the proceedings the second party has examined Shri Rajendra Patel vide Ex-18, Shri Ramanbhai Harijan Vide Ex. 33 and Kantibhai Harijan vide Ex-48. All these three witnesses have stated that they all are working as sweeper with the contractor and they were being paid by the contractor. If they want to proceed on leave they have to inform the contractor the ONGC have not given any appointment letter, they have been paid by the contractors; their PF is also deducted by the contractor. ONGC was not used to entrust the work to concerned workmen.

9. Against that the first party has examined one witness and he has stated that none of the concerned workmen are appointed as per the recruitment rules. All concerned workmen were permitted in employment due to the Court's protection. There is no relation of master and servant between the ONGC and the concerned workmen. He has specifically stated that Shri Rajendra Patel was not doing any work and being paid idle wages and the said facts in chief examination are not controverted by the second party. It means that Shri Rajendra Patel was not a clerk as claimed by him. There are only about 10 contractual are working and hence the clerk and or supervisor is not required to monitor the work. Moreover, as per documents supplied by the contractor vide mark 56/1 and also as per the oral evidence it is established that Rajendra Patel is not doing Clerical or Supervisory work. So that he is also one of the sweepers.

10. As stated hereinabove, the first party ONGC registered under Section 7 and the respective contractors are got license under Section 12 of the CLRA Act. The first party has also produced agreement between the principle employer and the contractor. As stayed herein above it is established that the concerned workmen are being paid by the contractor whenever the contractual workmen want to go on leave they have to take permission of the contractor. Contractor has entrusted them to work. Hence, it is established that the contract is genuine.

11. As argued by the first party that Shri Rajendra Patel and all persons involved in the reference are working as the sweeper till date none of the listed persons have challenged the order passed by the Hon'ble High Court in SCA No. 3936/1997 before the Higher Forum, wherein the Hon'ble High Court has stated that the listed persons are working as sweepers and as per the settled legal position the contractual workmen cannot be treated as employees of principle employer. The second party union has argued that the listed person is working since long and hence they are entitled for absorption with the ONGC against that the first party No. 1. ONGC argued that the listed persons continued in job through contractor under the cover of the order passed by this Hon'ble Tribunal as well as the Hon'ble High Court. The

First party ONGC further argued that as per the settled legal position merely on account of Court protection, if anybody is continued in job he had no right to get any relief on that basis. As stated hereinabove it is not in dispute that concerned contractual workmen continued in job on account of court protection and hence they are not entitled to get absorption on the ground that they have been working since long with the ONGC through contractor, as they are litigious employees. Admittedly none of the persons involved in the reference is recruited as per the Recruitment Rules of ONGC and on the contrary they have specifically admitted that they are the workmen of the contractor therefore as per the judgment of the Apex Court in case of Umadevi the reference is required to be dismissed. It is further argued that the regularization is a managerial function and the Tribunal or the High Court cannot interfere with the said function. I have gone through the judgment cited by the ONGC in case of Umadevi, Union of India Vs. RajsinghThakor, State ofGujarat Vs. Narendrabhai Solanki, Palitana Nagar Palika and State of Rajasthan Vs. Dayalal&Ors. In State of Rajasthan Vs. Dayalal and Ors. reported in 2011-I CLR 437 the Hon'ble Apex Court has held that eventemporary, ad-hoc or daily wage services for number of years letalone services for one or two years will not entitle such employee to claim regularization if he is not working against the sanctioned post. Sympathy and sentimate cannot be the ground for passing any order for regularization in absence of a legal right. The second judgment relief by the ONGC i.e.State of Gujarat and Ors. reported in 2011 I CLR 384 wherein the Hon'bleGujarat High Court has held that the matter of regularization of service of temporary workers or daily wager who put in very long service is to be left to the desecration and group concision of the state. The Another judgment of Palitana Nagar Palika reported in 2010 CLR 880 in that case award passed by the Tribunal was challenged whereby the Tribunal has directed the Nagar Palika to regularize the services of workmen w.e.f. 31.03.2006 and pay them modularly benefits from that date. The Hon'ble High Court has quashed and set aside the award passed by the Tribunal granting the regularization on the basis of law laid down by the Supreme Court in case of State of Karnataka Vs. Umadevi and Official Liquidator V/s Dayanand & Ors. In case of Karnataka Vs. Umadevi the Hon'ble Apex Court has held that merely because an employee had continued under cover of an order of the Court, under litigious employment he would not be entitled to any right to be absorb or made permanent in the service.

12. As per their pleadings they are working as sweeper i.e. under prohibited category as per the notification of 1976. The said notification is quashed and set aside by the Hon'ble Apex Court in case of Steel Authority of India 2001 7 SSC Page-I. Therefore, the plea of the second party that they are working under the prohibited category and that's why they are entitled to get absorption is not tenable.

13. In light of the aforesaid factual as well as the legal position settled by the Hon'ble Apex Court as well as the High Court the second party union is not entitled to any relief as prayed in the statement of claim.

14. Thus in the light of the aforesaid observations, all the workmen listed in the reference and statement of claim do not deserve their absorption in the first party ONGC as regular employee with continuity of original position and all consequential benefits of qualification and passed service.

15. The reference is finally disposed of as per the observations made above.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 16 फरवरी, 2017

का.आ. 404.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 229/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/7/99-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 16th February, 2017

S.O. 404.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 229/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 16.02.2017.

[No. L-41012/7/99-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 2nd December, 2016

Reference: (CGITA) No. 229/2004

The Divisional Railway Manager,
Western Railway, Bhavnagar Para,
Bhavnagar (Gujarat) – 380001

...First Party

V/s

The Divisional Secretary,
Paschim Railway Karmachari Parishad,
E/209, Sarvottam nagar, Nr. New Railway Colony,
Sabarmati,
Ahmedabad (Gujarat) – 380001

...Second Party

For the First Party : Shri D.C. Khuva

For the Second Party : Shri B.K. Sharma

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41012/7/99-IR(B-I) dated 04.10.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the following demand of the Paschim Railway Karmachari Parishad, Ahmedabad that:

(a). That the seniority of Shri Rajesh C. Nirmal, Diesel Assistant under Loco Foreman, Botad be interpolated at Sl. No. 27 A in the seniority list of 1994 of Diesel Driver (C) in the panel of 1994 is legal and justified?

(b). That the name of Shri Dhirajlal, Substitute Cleaner declared medically unfit be included/re-engaged along with other medically unfit substitute cleaner namely Shri Ranjit Jetha, Hashmukh Dayer, Jetsur Mansur in the railway's letter dated 27.04.1994 is legal and justified? If the answer to the above demands is ‘YES’ then to what relief the concern employees are entitled to?”

1. The reference dates back to 04.10.1999. The second party submitted the statement of claim Ext. 3 on 11.09.2000 and the first party submitted the written statement Ext. 9 on 24.09.2001. The second party also submitted the rejoinder Ext. 19 on 21.09.2013 and also moved an application Ext. 17 on 13.10.2012 for production of documents. Since then the second party has been absent on most of the dates and has also not preferred to lead evidence.

2. Thus it appears that the second party is not willing to prosecute the case. Therefore, the reference is disposed of in the absence of the evidence of the second party with an observation as under: “the following demand of the Paschim Railway Karmachari Parishad, Ahmedabad that:

(a). That the seniority of Shri Rajesh C. Nirmal, Diesel Assistant under Loco Foreman, Botad be interpolated at Sl. No. 27 A in the seniority list of 1994 of Diesel Driver (C) in the panel of 1994 is not legal and justified.

(b). That the name of Shri Dhirajlal, Substitute Cleaner declared medically unfit be included/re-engaged along with other medically unfit substitute cleaner namely Shri Ranjit Jetha, Hashmukh Dayer, Jetsur Mansur in the railway's letter dated 27.04.1994 is not legal and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 16 फरवरी, 2017

का.आ. 405.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण

एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 231/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/185/99-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 16th February, 2017

S.O. 405.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 231/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 16.02.2017.

[No. L-41012/185/99-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 2nd December, 2016

Reference: (CGITA) No. 231/2004

1. The Chief Project Manager,
Western Railway, Station Building,
Ahmedabad (Gujarat) – 380002
2. The Dy. Chief Engineer (Const.),
Western Railway, Station Building,
Ahmedabad (Gujarat) – 380002

...First Party

V/s

The President,
Paschim Railway Karmachari Parishad,
E/209, Sarvottam nagar, Nr. New Railway Colony,
Sabarmati,
Ahmedabad (Gujarat) – 380005

...Second Party

For the First Party : Shri H.B. Shah

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41012/185/99-IR(B-I) dated 15.11.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the Railway Administration in denying payment of overtime to Shri K.D. Joshi, the then SOM in the establishment of Dy. CE (II) for the period from May, 1989 to Dec. 1989 against the extra hours of work beyond the rostered hours is legal and justified? If not then to what relief the concerned employee is entitled to?”

1. The reference dates back to 15.11.1999. The second party submitted the statement of claim Ext. 3 on 02.02.2000 and first party submitted the written statement Ext. 5 on 29.08.2001. Since then the second party has been absent on most of the dates and has also not preferred to lead evidence.

2. Thus it appears that the second party is not willing to prosecute the case. Therefore, the reference is disposed of in the absence of the evidence of the second party with an observation as under: “the action of the Railway Administration in denying payment of overtime to Shri K.D. Joshi, the then SOM in the establishment of Dy. CE (II) for the period from May, 1989 to Dec. 1989 against the extra hours of work beyond the rostered hours is legal and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 16 फरवरी, 2017

का.आ. 406.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक (फोरमली स्टेट बैंक ऑफ सौराष्ट्र) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 75/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-12012/51/2011-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 16th February, 2017

S.O. 406.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 75/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India (Formerly State Bank of Saurashtra) and their workmen, received by the Central Government on 16.02.2017.

[No. L-12012/51/2011-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 10th January, 2017

Reference: (CGITA) No. 75/2011

1. The Regional Manager,
State Bank of India (Formerly State Bank of Saurashtra),
State Bank Building, Neelambaug Chowk,
Bhavnagar (Gujarat)
2. The Branch Manager,
State Bank of India (Formerly State Bank of Saurashtra),
Taleti Road, Palitana,
Bhavnagar (Gujarat) ...First Party

V/s

Shri Alpesh V. Joshi,
Navapura Chowk,
Gangadhar Raj Gour Street,
Palitana,
Bhavnagar (Gujarat) ...Second Party

For the First Party : Shri B.S. Mishra

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/51/2011-IR(B-I) dated 11.10.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of State Bank of India, Bhavnagar in terminating the services of Shri Alpesh V. Joshi w.e.f. 13.02.2010, is legal and justified? To what relief the workman is entitled?”

1. The reference dates back to 11.10.2011. Both the parties were served by registered post on 30.04.2012 to appear on 10.05.2012 vide notice Ex. 2 dated 04.04.2012. The first party State Bank of India submitted his vakalatpatra Ex. 8 of his advocate on 10.05.2012 but the second party did not prefer to appear and submit his statement of claim. The first party has moved an application Ex. 7 alleging the aforesaid facts for closure of the case as the second party has failed to appear and to express his interest in the case. Thus in light of the aforesaid applications and facts, second party does not appear and willing to prosecute the case.

2. Therefore the reference is disposed of with the observation as under: “the action of the management of State Bank of India, Bhavnagar in terminating the services of Shri Alpesh V. Joshi w.e.f. 13.02.2010, is legal and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 16 फरवरी, 2017

का.आ. 407.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 22/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/81/2006-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 16th February, 2017

S.O. 407.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of West Central Railway and their workmen, received by the Central Government on 16.02.2017.

[No. L-41012/81/2006-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 22/2007

Reference No. L-41012/81/2006-IR(B-I) dated: 06.03.2007

Shri Ramjilal
S/o Gulab
R/o Khedia, Post & Tehsil Masalpur
Distt. Karoli, Karoli (Raj.)

V/s

The Divisional Railway Manager
West Central Railway, Kota,
Kota (Rajasthan).

Present :

For the Applicant : Sh. Surendra Kumar Trigunayat, Adv.
For the Non-Applicant : Sh. Om Prakash Ranjika, Adv.

AWARD

Dated : 28.7.2016

1. The Central Government in exercise of powers conferred under clause (d) of Sub-Section 1 & 2 (A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following Industrial dispute to this tribunal for adjudication :-

“Whether claimant workman Shri Ramjilal S/o Shri Gulab was in the employment of Electrical & Engineering Deptt., Kota Division under the PWI Bayana from 21.10.82 to December, 2002? If yes, his discontinuation from December, 2002 by Electrical & Engineering Deptt., Kota Division through PWI, Bayana is justified? If not, what relief the workman is entitled to and from which date?”

2. According to statement of claim briefly fact of the case is that applicant/workman Sh. Ramjilal S/o Sh. Gulab Meena was appointed on the post of Group D employee in Schedule Tribe quota after selection in Electric & Engineering Department, in Kota division of the Railway.

3. Further, it has been alleged that applicant was selected by selection committee & a list dated 24.2.82 of selected candidates of Schedule Tribe was published by Divisional Office, Kota wherein applicant has been shown at serial No. 16. Applicant was appointed against vacant post after submission of medical fitness, character certificate, caste certificate & certificate related to age.

4. Applicant was appointed under PWI, Bayana on 21.10.82. He has worked till December, 2002 & after December, 2002 respondent stopped taking work from him. Further it has been alleged in para 8 that applicant repeatedly requested the opposite party to take him back in employment & make payment of two month's salary which was not paid and opposite party did not respond to the request of the applicant.

5. Further it has been alleged in para 7 that applicant has worked for more than 240 days every year between the date of appointment & the date of discontinuance, but respondent has neither given any notice before the date of discontinuance or removal nor has made any payment in lieu of notice, thus, respondent has acted in violation of section 25-F of Industrial Disputes Act, 1947. Respondent has not prepared any seniority list before removal of applicant from service & when applicant was removed his juniors were working with respondent, thus, the act of the respondent is in violation of section 25-G of Industrial disputes Act, 1947 & rule 77 of the Industrial disputes (Central) Rules, 1958.

6. After removal of applicant respondent has made new recruitments but applicant workman was not given priority over newly recruited persons, thus, the act of the opposite party is within the ambit of unfair labour practice hence, it has been prayed that applicant be reinstated in the service with all consequential benefits & continuity of service declaring the order of removal as illegal.

7. In reply to statement of claim in preliminary objections it has been alleged that claim has been presented on baseless grounds wherein neither place of service has been given nor name of the department has been given in which applicant claims to have worked. In para wise reply to statement of claim it has been alleged that statements in para 1 & 2 are based on record and require no answer. Statements in para 3 to 20 have been denied & against para 21 relating to relief it has been alleged that claim of the applicant may be rejected.

8. It has been alleged that the true fact is that as per record of the respondent applicant workman was never taken on regular work & as he was not taken on work, his engagement by the opposite party till December, 2002 is specifically denied. The applicant was not appointed by opposite party & applicant has not produced any document which may indicate that applicant was given appointment. The statement of the applicant is fabricated that he was engaged in Electrical & Engineering Department of Kota Division. As the applicant was never appointed by opposite party hence, the question of his working for a period of more than 240 days in each calendar year & his discontinuance of the service does not arise.

9. Against para 8 of statement of claim it has been specifically denied that applicant never made any representation before the opposite party from which it could appear that applicant was given appointment & he was not given his pay for any period of his working.

10. Against para 12 it has been specifically alleged that as the applicant was never appointed with opposite party hence, the question of giving a show cause notice or charge sheet to the applicant does not arise. Against para 13 about unfair labour practice it has been alleged that new recruitments are made by railway recruitment Board after advertisement.

11. In para 14 of statement of claim applicant has alleged that applicant started working under PWI, Bayana w.e.f. 21.10.82. Specifically denying the above statements it has been alleged that applicant has not filed any document which showss that he has worked under PWI, Bayana. It has been further alleged that according to letter of the A.E.N., Bharatpur dated 30.5.2006 (Annex-R-2) applicant has never worked under PWI, Bayana. About unnecessary deduction

of pay of the applicant & stoppage of the pay of the applicant as alleged in para 15 of the statement of claim it has been alleged by opposite party that no work can be taken from a workman & no deduction or stoppage of pay of a workman can be done by an officer of a department without consent of the railway Administration. It has been further alleged that any payment for work done is made only after verification of the account department.

12. Against para 5 of statement of claim it has been alleged that statement in para 5 is based on record hence, it is admitted that according to office letter dated 24.2.82 candidate listed were to be given appointment after their medical examination & character verification. Applicant was found fit in medical examination on 14.10.82 but after medical examination he did not appear in the office for appointment hence, he was not appointed.

13. It has been prayed that applicant is not entitled to any relief & claim is liable to be dismissed.

14. In rejoinder, in preliminary objection applicant has reiterated his selection vide order dated 24.2.82 as alleged above with further contention that he was posted as Gangman under PWI, Bayana Sh. Satish Chand Sharma & workman junior to him mentioned in the list are still working under opposite party. Further, it has been alleged that contention of the opposite party is wrong that applicant was not discontinued from the service & applicant never joined the duty, the true fact is that applicant served for many years & opposite party removed applicant from service without complying the provision of section 25-F of Industrial Disputes Act & Rule 23 of Work Charge Service Rules, 1964. Further it has been alleged that opposite party has violated provision of Rule 9(25) of Discipline & Appeal Rule, 1968.

15. In rejoinder, in para wise reply against reply to statement of claim applicant has alleged that he was sent to the Divisional Medical Officer, Railway, Gangapur city with medical memo dated 11.10.82 for medical examination & after securing medical fitness certificate dated 14.10.82 deposited it to PWI, Bayana. He was appointed by opposite party on the post of Gangman as regular group D employee. In rejoinder, under head "para wise reply" applicant has alleged in para 1 that he was sent to Divisional Medical Officer, Gangapurcity for medical examination with medical memo dated 11.10.82 but in para 2 he has alleged that he was sent to Divisional Medical Officer, Gangapurcity with medical memo dated 12.10.82. On record available medical memo is dated 12.10.82 & not dated 11.10.82.

16. Applicant has alleged in para 3 of rejoinder that he had sent the information to senior officers through UPC, registered A.D. & telegram to draw their attention about his difficulties & he had also submitted the application to the office of DRM securing the receipt of the application & the receipt shall be produced in evidence. In para 4 it has been stated that after securing the medical fitness certificate dated 14.10.82 applicant deposited the fitness certificate with PWI, Bayana Sh. Satish Chandra Sharma & went to carry out his duties. Further the applicant has alleged that at PWI, Bayana he was making signature every day in muster roll (time book) & working with other workman including his juniors after making signature. It has been further alleged that opposite party started making illegal deductions from his pay which was complained by him.

17. In para 6 of rejoinder it has been further alleged that applicant was appointed under PWI, Bayana Sh. Satish Sharma & has not been absent on any occasion during his service till his discontinuance from service. In para 10 of rejoinder it has been alleged that no disciplinary action was taken against him before his removal from service. At the end in rejoinder relief claimed in statement of claim has been reiterated.

18. In support of Statement of claim applicant has filed his affidavit & he has been cross examined by opposite party. Another witness Sh. Laxminarayan Meena has been produced with his affidavit in support of applicant who has been cross examined by opposite party. Applicant has filed document Annex-1 to 38 in support of his case.

19. Sh. Om Prakash Meena, Office Superintendent, has been examined as witness on behalf of opposite party who has been cross examined by applicant. R-1 to R-4 four documents have been filed along with affidavit of Sh. Omprakash Meena as documentary evidence.

20. Heard the argument of learned representative of both the parties. Both the sides have filed their written arguments along with citations.

21. Following cases have been referred from applicant side :-

1. (2001) Supreme Court Cases, 61, Scooters India Ltd.....Appellant v/s M.Mohammad Yaqub And Another.....Respondents.
2. JT 1999 (2) SC 37, Samishta dube.....Appellant v/s City Board, Etawah & Anr.....Respondents.
3. JT 2000 (Suppl.2) SC 204, Mookchand Kharati Ram Hospital K.UnionAppellant v/s Labour Commr. & co.Respondent.
4. (2003) 4 SCC 27, S.M.Nilajkar And Others.....Appellant v/s Telecom District Manager, Karnataka.....Respondents.

5. (A.I.S.L.J) IX 2004 (3) 78 Delhi High Court, Indra perfumery Co. Through Sudershab Oberoi.....Petitioner v/s Presiding Officer & Ors.....Respondents.

6. 2008 Western Law Cases 9Raj.) UC 730, Rajasthan High Court (Jodhpur), State & Ors.....Petitioner v/s giriraj Prasad & Anr.....Respondents.

7. 2015 (3) WLC (Raj.) 741, Rajasthan High Court (Jaipur Bench), Prakash Kachhawa.....Appellant v/s State of Rajasthan & Ors.....Respondents.

22. It has been argued & has been mentioned in the written argument by learned representative of the applicant that applicant was permanently appointed from Schedule Tribe quota to class IV post vide letter No. E/E 892/2/3 dated 24.2.82 (Annex-2) of DRM Office, Kota. He was issued medical memo (Annex-4) for medical examination by PWI, Bayana & medical fitness certificate(Annex-5) was issued to him by Railway Doctor, Gangapur City & he submitted the medical fitness certificate to PWI Bayana & joined the duty on 15.10.1982 under PWI, Bayana. It has been further argued that he worked till December, 2002 & subsequent to that PWI, Bayana stopped taking work from him & orally directed him not to come to the office of PWI, Bayana for work. Applicant has further argued that he repeatedly requested the management of opposite party to take him back on work & pay him the unpaid part of the wages but opposite party did not care to the applicant's request & applicant was not given any notice or any payment in lieu of notice before terminating his services which violated Section 25-F, 25-G & 25-H of Industrial disputes Act, 1947. Further, it has been mentioned in written argument that at the time of removal from service workman junior to him were working at the time of removal from service & work carried out by the applicant was of permanent nature & that work is still in existence hence, termination of the services of the applicant is unfair & illegal. It has been further said that his removal from the service by oral order is in violation of Article 311(2) of Indian Constitution hence, order of termination be declared illegal with reinstatement of applicant in the service with all consequential benefits & continuity in service.

23. Countering the above argument learned representative of the opposite party has argued & the same has been mentioned in para 1 & 2 of written argument that claim of the applicant is based on fabricated facts & no document has been filed in support of his case. It has been further alleged that applicant has not mentioned the place & department of his working hence, the claim is liable to be dismissed. It has been further argued that applicant was never engaged in the regular work of department & as he was not taken on work hence, whatever statement has been made by applicant about work is baseless. He was never appointed by the department & no such documents relating to appointment has been filed by the applicant which may indicate that he was given appointment. The applicant has fabricated the facts that he was selected in Electrical & Engineering department of Kota Division. Applicant was not selected by any selection committee against any vacant post of the department & no advertisement was issued in this regard. It has also been alleged that no recommended list of candidate was issued by department & no one was appointed on the basis of any such list. It has been further argued that when applicant was not given appointment by the department then question of his working for 240 days & the question of his discontinuance does not arise. It has also been alleged that applicant has not filed any document in support of his contention that he has worked for 240 days in a calendar year immediately preceding the date of his alleged discontinuance from service or he was given any appointment. Further it has been argued that applicant claims Annex-2 as his letter of appointment which is only selection list & there is nothing in Annex-2 to indicate that it is an appointment letter & applicant have not filed any extract of attendance register or document relating to payment of wages which may serve as testimony to the effect that he had served in the railway. It has also been argued that applicant was required to submit medical certificate before joining the duty but there is no document available on record to show that applicant has submitted the certificate of his medical fitness to the department of railway & has joined the duty anywhere subsequent to submission of medical fitness certificate.

24. It shall appear from above argument of both the parties that contention of the applicant is that he was appointed by opposite party & he has worked for 240 days in a calendar year & his services were discontinued without any notice in violation of section 25-F, 25-G & 25-H of Industrial Disputes Act, 1947. In above circumstance & in view of specific denial by opposite party the burden of proving that applicant was appointed by opposite party & has worked consequent upon his appointment lies on the applicant.

25. From arguments & pleading of both the parties following question arise for determination :-

“Whether applicant workman Sh. Ramjilal S/o Sh. Gulab was in the employment of Electrical & Engineering Department, Kota Division under PWI, Bayana w.e.f. 21.10.82 to Dec, 2002 ?”

26. Annexure-2 is the result of selected candidates of Schedule Tribe category who were selected on the basis of selection held on 30.12.81 under crash programme to wipe out the deficiency of ST candidates in railway. It has been mentioned in Annex-2 that the listed successful candidates will be appointed against the vacancies after verification of their character & antecedents & passing of requisite medical examination. It has been further mentioned that successful candidates listed therein will have to produce the documentary proof of their age & caste as & when required by the Railway Administration & those who failed to submit the certificate as mentioned above will not be offered regular

appointment & their name will be deleted from the panel. It has been further mentioned that allotment of respective units & departments to the candidates will be notified separately at later stage.

27. Total 67 candidates have been shown in Annex-2 dated 24.2.82 wherein applicant workman Sh. Ramjilal S/o Gulab has been shown at serial No.16 & his real brother Sh. Chauthilal S/o Gulab has been shown at serial No.26. Witness of this case Sh. Laxminarayan S/o Sh. Raghubir Singh has been shown at serial No.55. Annex-1 is letter dated 22.12.81 to applicant Sh. Ramjilal at his village address to appear in interview on 30.12.81. The contention of the learned counsel for the applicant is that applicant got himself medically examined by Medical Superintendent, Gangapur City on 14.10.1982(Annex-5) on the basis of memo issued by Engineering Department, Bayana dated 12.10.82 (Annex-4) & appeared before the PWI, Bayana on 15.10.82 with medical fitness certificates for joining the duty & joined the duty on 15.10.82 under PWI, Bayana as per statement of para one of written argument. Learned representative for opposite party has denied that applicant joined duty before PWI, Bayana & he worked under PWI, Bayana. In para 14 of the reply to statement of claim opposite party has denied that applicant has worked under PWI, Bayana or joined the duty under PWI, Bayana. The burden of proving lies with applicant that he joined the duty under PWI, Bayana & worked there from 21.10.82 till December, 2002 as alleged in statement of claim. No documentary evidence in support of above contention have been filed on record indicating that applicant had joined the duty under PWI, Bayana. It is pertinent to note that as per statement in para 3 of Annex-2 just above the list of candidates it has been mentioned that a separate notification was to be issued on the basis of Annex-2 designating the respective unit & departments allotted to the applicants showing their place of duty. This notification was to take place after submission of proof of age, caste certificate, verification of character & antecedents & passing of medical examination. No such notification or appointment letter has been filed on record by the applicant indicating that he was allocated the place at Bayana under PWI, Bayana. Applicant has also not filed any documentary proof of his joining or working under PWI, Bayana.

28. Witness Sh. Laxminarayan has admitted in his cross-examination at page 2 that Annex-2 is selection list & appointment letter was issued on the basis of Annex-2 but no appointment letter in favour of Sh. Ramjilal has been filed by applicant on the file. When he has been asked that, is there any document in favour of Sh. Ramjilal which may indicate that he had worked in railway then he has pointed out towards Annex-36 & 37 which is photocopy of railway pass & about these two passes he has alleged that these passes are only available to regular employee. No other document has been shown by the witness or filed by the applicant to support that applicant Sh. Ramjilal has been in appointment & service of the railway. Opposite party in his written argument in para 3 has alleged that documents submitted by applicant in support of statement of claim are self contradictory & no reliable & relevant document has been filed which may prove that applicant has served in railway. In para 6 of the written argument in relation to document it has been alleged that documents have been prepared by fabrication & forgery to misguide the tribunal. It has been further alleged that applicant has proceeded on the basis of untruth & dishonesty with purpose to misguide the court & contentions are completely wrong & fabricated. Now, if Annex-36 & 37 is minutely observed & inspected it shall appear that there is overwriting in both the passes in the column of Return journey & it clearly indicates that there has been meddling with entries at more than one place in the pass. Both the passes have been shown to be second class free pass. Nothing can be traced from these two passes that what is the clear destination of commencement of journey & the purpose for which these passes have been shown to be issued in favour of applicant. There is no evidence in support of these two passes that they were issued to the applicant & what was the purpose & correct duration of these passes. Annex-36 indicates that it was for journey between 'Gangapur City' & Bayana Junction but "Gangapur City" has been struck & some another station has been introduced but has not been signed or initialled. Here, it will not out of place to mention that even employees working through contractors in railway are always issued with identity card for the period of their appointment even if, the period of appointment is very short but applicant has not filed any identity card issued in his favour who claims to have worked for nearly 20 years. In absence of any reliable record existing in favour of applicant regarding his serving in the railway I am of the view that Annex-36 & 37 cannot be utilised to conclude that applicant had worked in the railway because Annex-36 & 37 both are tampered document & it has not been proved through reliable means that these passes were issued to applicant & what was the purpose of issuing it. Applicant has kept in guarded custody interview letter dated 22.12.81 hence, it is expected that if there was an appointment letter or an identity card or other similar documents etc issued in his favour he must have filed them on record. In above fact & circumstance, I am of the view that Annex-36 & 37 cannot be utilised to conclude that applicant was appointed in the railway in absence of any appointment letter subsequent to existence of Annex-2.

29. Applicant Sh. Ramjilal has deposed in his cross-examination that he is an educated person & he knows reading & writing. He had signed his statement of claim & affidavit in evidence after reading both the documents. He has further alleged that in relation to his appointment no notification was issued by Railway & he was taken in service by railway on 11.10.82. He has further alleged that he was given engagement in railway through contractor Sh. Kirori Lal & he was paid Rs.400/- monthly as wages by contractor. He has further alleged that his present age is nearly 52-53 years. Nothing else except the above deposition appears in the cross-examination of the applicant Sh. Ramjilal. From the above deposition the only inference that can be drawn is that he was in engagement with railway w.e.f. 11.10.82

through contractor Sh. Kirori Lal on monthly wage of Rs.400/. There appears nothing in the statement of claim that applicant was engaged through contractor in the railway hence, no support can be derived from above statement to prove the case of applicant as claimed in statement of claim. It is to be noted that there is no appointment letter existing in favour of applicant filed on record issued either before or after his medical examination with designated place & department of posting. Further it is to be noted that there is no documentary proof on record filed by applicant or opposite party that applicant has joined his duty under PWI, Bayana or has worked under PWI, Bayana in any year between 21.10.82 to Dec, 2002 except affidavit of the applicant & oral evidence adduced by him before the tribunal during cross-examination. The cross examined version of oral examination clearly indicate that it does not support the case of statement of claim of the applicant. It only says that he entered in the service of the railway on 11.10.82 through contractor Sh. Kirori Lal & he was paid by the contractor. Thus, oral evidence of the witness does not support the case of statement of claim.

30. In written argument applicant has said that he worked from 15.10.82 till Dec, 82 under PWI, Bayana & PWI, Bayana stopped taking work from him after Dec, 2002 but the true fact is that there is no document on record to indicate that applicant has joined the duty under PWI Bayana after medical examination. Applicant has neither filed any appointment letter nor any other document indicating his rank, pay scale & place of posting at the time of his joining.

31. As far as the question of applicant working in each calendar year for period for more than 240 days is concerned, in para 7 of statement of claim it has been alleged that he has worked for more than 240 days in every year in his entire service from date of joining till the date of discontinuance & he never remained absent but no such record has been filed by the applicant which may indicate that he has worked for 240 days in any calendar year between alleged date of joining on 21.10.82 till his alleged discontinuance in Dec, 2002.

32. As far as the question of any support to the case of the applicant arising out of evidence of Sh. Omprakash Meena, Office Superintendent, witness for opposite party is concerned, the case of the applicant regarding appointment & working of the applicant in every calendar year for more than 240 days does not find support at any stage of cross-examination of witness Sh. Omprakash Meena. Along with affidavit of Sh. Omprakash in evidence four documents have been filed which are correspondences relating to applicant & his brother Chauthi Lal regarding the fact of their working with Railway. Perusal of these four documents indicate that during conciliation proceeding before the Regional Labour Commissioner (Central), Jaipur these documents came in existence in relation to tracing the history of these two persons about any possibility of their engagement with railway from 21.10.1982 till 2002. Letter No. E/1084/1 dated 30.5.2006 is correspondence between Assistant Divisional Engineer, Bharatpur Junction & DRM, Kota wherein it has been mentioned that none out of these two i.e. applicant Sh. Ramji Lal & his brother Sh. Chauthi Lal have worked under PWI Bayana. It has also been alleged that no record related to these two persons is available in the office of PWI Bayana . It has been further suggested in the letter that verification may be made from the account section with pay sheet for the period 21.10.82 to 1986.

33. Letter dated 19.7.2006 addressed to Regional Labour Commissioner (Central), Jaipur is reply to the representation made by applicant's brother Sh. Chauthi Lal before Regional Labour Commissioner (Central), Jaipur/ Conciliation Officer wherein it has been alleged regarding Sh. Chauthi Lal that complaint of Sh. Chauthi Lal is relating to event wherein nearly twenty four years have passed. Further it has been mentioned that from investigation related to documents submitted by Sh. Chauthi Lal with his representation it was found that he was considered for appointment during special recruitment drive for Scheduled Tribe candidates & after issuance of appointment letter he might have been sent for medical examination but he did not report for duty under PWI Bayana after medical examination. It has been further submitted that on the basis of record of the office his name does not appear in the "time book" or "pay register" for the period 1982 to 1986. Further it has been alleged that after laps of 24 years it is not possible to consider the case of Sh. Chauthi Lal. Another letter dated 22.1.2007 is from DRM (Personnel), Jaipur to GM (Personnel), Jabalpur, in relation to complaint of the applicant's brother Sh. Chauthi Lal before Regional Labour Commissioner (Central), Jaipur. In this letter it has been communicated that after investigation in relation to the complaint of Sh. Chauthi Lal it was found that he was recruited as a result of special recruitment drive for ST candidates & he was sent for medical examination for engagement in the service but he did not present himself for posting after medical examination hence, he could not be posted. It has been further alleged that after laps of such long period applicant has applied for appointment which is baseless beside time barred. All above mentioned correspondences which are part of affidavit of witness of opposite party indicate that although applicant was in the selection list of recruitment drive & he was also issued authority for medical examination but he did not report back for posting after securing fitness certificate.

34. From the cross-examination of witness for opposite party Sh. Omprakash Meena there appears nothing favourable to the applicant capable of securing support of the allegations in statement of claim that applicant was issued with appointment letter or he has worked for 240 days immediately preceding the date of alleged termination in Dec, 2002 or in any calendar year from 21.10.82 to Dec, 2002.

35. It is important to mention & take notice that witness Sh. Omprakash Meena has alleged about Annex-2 that it contains the result of screening of candidates who were already working in the railway as casual labourers since before the preparation of the list dated 24.2.82(Annex-2). He has also made a specific mention that Sh. Chauthi Lal, Laxminarayan Meena & Ramji Lal were already working as casual labourers on daily wages prior to their inclusion of name in Annex-2 & they were issued medical examination memo from the office of the PWI Bayana. When witness has been asked that as casual labourer for how long period Sh. Ramji Lal & Chauthi Lal have remained engaged then witness has answered that he cannot answer the question without seeing record which is not available on the file. Further, when he has been asked that during period of working of Sh. Chauthi Lal & Sh. Ramjilal as casual labourer what was the length of working period required to get the status of 'temporary employee' from the status of a casual labourer then the witness has answered that there is no record available on the file. Here, it is important to take note that this is no one's case that applicant was already working as casual labourer in the Railway prior to preparation of Annex-2. It is also necessary to take note that if the applicant would have been in the service of the railway as casual labourer on daily wage basis then there was no need to sent call letter for interview at home address of the applicant. In the statement of claim also there is no mention that applicant was an employee as casual labourer already working in the railway before preparation of list Annex-2. Witness Sh. Omprakash Meena has admitted in his cross-examination that contention of para 5 of his affidavit is correct wherein it has been alleged that candidates in Annex-2 were to be appointed only after medical fitness & verification of their character & applicant did not appear for appointment after securing medical fitness dated 14.10.82. With contention of fact in para 5 of affidavit of witness it is clear that contention of the witness in cross-examination on page 6 is wrong that applicant was already appointed as casual labourer on daily wage basis before preparation of Annex-2. On page 8 witness has alleged that he cannot say that Sh. Laxminarayan Meena, applicant Sh. Ramjilal & his brother Sh. Chauthi Lal were working under PWI Bayana or somewhere else but memo of medical examination was issued from Bayana but he cannot say that it was issued from the office of PWI Bayana or from the office of IOW. Accordingly, I am of the view that no benefit can be derived in favour of applicant from the contention of witness Omprakash that applicant was working in the railway under opposite party since the time before preparation of Annex-2 & that part of the statement by witness in cross-examination on page 6 appears to be false.

36. Learned representative for opposite party has argued that Sh. Laxminarayan Meena is an interested witness hence, no reliance should be placed on his testimony. As far as the creditworthiness of witness Sh. Laxminarayan is concerned he is a candidate at serial No.55 of Annex-2 who was working on the post of Marker in railway & has been compulsorily retired from the service on the ground of misconduct. He is a witness who claims himself to be authorised by applicant Sh. Ramjilal to represent his case. When he was objected on 2.3.16 by learned representative of opposite party he alleged that applicant has authorised him to represent his case. Authority of applicant dated 25.8.11 is on record & from perusal of entire file it is evident that applicant has participated in the proceeding by moving many applications & putting appearances on various dates on behalf of applicant Sh. Ramjilal. Here, it is pertinent to note that Sh. Laxminarayan has alleged that he has worked with Sh. Chauthi Lal but there is no documentary evidence to support his contention. From perusal of correspondence dated 29.5.2006 between Senior Section Engineer (Railpath), Bayana & Assistant Divisional Engineer, Bharatpur contention of witness Sh. Laxminarayan does not find support that he has worked with Sh. Ramjilal or Sh. Chauthi Lal. The correspondence refers to only one Sh. Charan Singh S/o Sh. Tejram who is one of the person under Annex-2. Sh. Tejram has been shown to be working under PWI, Bayana at relevant time. Thus, it appears that only to support the case of applicant, Sh. Laxminarayan has alleged that he has worked with Sh. Chauthi Lal.

37. As far as gist of the evidence of Sh. Laxminarayan Meena in favour of applicant Sh. Ramjilal & its corroborative value is concerned in his affidavit witness has deposed only two points wherein No. (1) is related in support of fact contained in Annex-2 & another fact is that Ramjilal was a regular Gangman at Bayana & he was sick w.e.f. 26.9.83 to 9.12.83 & due to sickness he was not taken on work by PWI, Bayana but on the basis of order dated 23.1.84 of Senior DEN, II, Kota he was taken on work & absence of applicant due to sickness was regularised by grant of leave without pay. In cross-examination he has alleged that Annex-2 itself is an appointment letter for the applicant but later he has admitted that Annex-2 is only selection list of candidates & based on Annex-2 appointment letters were issued to the candidates. He has further alleged on page 3 of the cross-examination that notification in relation to appointment of Sh. Ramjilal was issued but notification is not available on file. He has also alleged that Sh. Kirori Lal was working on the post of Jamadar in Railway & he was taking work from Ramjilal & Kirorilal was not a contractor. He has further alleged that Sh. Kirorilal has taken work from Sh. Ramjilal w.e.f. 21.10.82 to Dec, 82. There is no document on record that Sh. Kirorilal was a Jamadar & not a Thekedar. On page 4 of cross-examination he has alleged Annex-6 as medical memo & Annex-7 as medical fitness certificate & both these documents have been shown as Annex-4 & Annex-5 respectively in written argument. When witness has been asked on page 4 of cross-examination to show the document in proof of working of Ramjilal with railway available on file then he has answered that it may be in possession of opposite party & similarly on page 6 when he has asked to show the documents available on file about joining of Sh. Ramjilal with railway then he has answered in reply to this question that it may be with opposite party.

38. Sh. Ramjilal has not filed any documentary evidence on record in relation to working continuously for 240 days. From the above evidence of Sh. Laxminarayan Meena it is clear that contention of Sh. Ramjilal does not find any support that he has worked for 240 days continuously in a calendar year immediately preceding the date of his discontinuance. It is also important to note that Sh. Ramjilal has not filed any document on record which is capable of indicating detail of any single payment made to him on account of his working in the Railway. Further it is important to note that he claims to have worked from 21.10.82 to Dec, 2002 but there is nothing to indicate that he had a GPF account & any amount to the credit of such account which is a mandatory account required to be maintained for any employee.

39. Greater reliance has been placed from the side of applicant on the document Annex-38 which is a letter dated 23.1.84 from Sr. DEN, II, Kota addressd to PWI, Bayana. Strong objections have been raised by learned representative of the opposite party in para 3,4,5,6,8 & 9 of the written argument regarding documents filed by applicant in support of his case alleging them to be forged & baseless having no support to the case of the applicant. In para 5 of the written argument making special reference to Annex-38 it has been argued that the document is self contradictory & has neither been issued by railway nor department of the railway is authorised to issue such document. The document has been fabricated by applicant which is wrong in itself wherein it has been alleged that Sh. Ramjilal Gangman working under PWI (place not mentioned) was selected vide letter dated 22.11.83 for traffic department. It has been further mentioned that he was under private Doctor's treatment w.e.f. 26.9.83 to 9.12.83 & he has resumed duty vide duty certificate No. 471288 dated 9.12.83 issued by DMO & has joined in traffic department from 10.12.83 as per order issued by ACS-KTT vide letter dated 8.12.83. It has been further mentioned that in fact the employee should have obtained relieving letter from the office before joining in traffic department & this laps has been taken up separately from this office & it has been expected that applicant Ramjilal may be relieved from the side of PWI, Bayana w.e.f. 9.12.83 (AN) & his service particulars should be sent to ACS, Kota for record. Regarding the period of absence on account of being under treatment from private doctor it has been alleged that it may be treated as leave without pay.

40. Annex-38 as indicated above has been alleged to be a document fabricated by applicant hence, a burden is upon the applicant to prove the creditworthiness of Annex-38. No question has been asked from Omprakash Meena in relation to Annex-38. No document issued by doctor relating to sickness/fitness have been submitted by the applicant. Annex-38 also does not indicate that what was the nature of illness of the applicant & the name of the doctor who treated him. It has been pointed out by learned representative of opposite party that same document with change of name in respect of Chauthi Lal about the same date of sickness has been filed by Sh. Chauthi Lal in his case CGIT case No.14/2007, Sh. Chauthi Lal v/s Railway, which is under decision by this tribunal & that is sufficient to conclude that this document is fabricated because it is not practicable that both the brothers fell ill on the same day & secured Annex-38 in the same manner for same period of sickness. By going through the entire fact & circumstances of the case it shall appear that if Annex-38 is treated to be a true document then consequence that would arise is that applicant did not join the duty back under PWI, Bayana after sickness and without relieving from Bayana he joined the Traffic Department w.e.f. 10.12.83. If it is true that he joined Traffic Department on 10.12.83 then his statement is false that he worked under PWI, Bayana from 21.8.1982 till Dec, 2002. Similarly it is also important to note that applicant has given different date of joining at different places and stages of the proceeding. In statement of claim applicant has alleged that he joined duty on 21.10.82 and in written argument has alleged that he joined duty on 15.10.82. In his affidavit in evidence and rejoinder he has shown his joining on 14.10.82 & in cross-examination Sh. Ramjilal has alleged his joining on 11.10.82.

41. There appears no reason why Annex-38 has come into existence for creating an unusual way of joining back from sickness by applicant and no reliance can be placed on this document when it has been denied by opposite party that such document has not been issued. Applicant has not proved it's creation and origin by producing witness for its execution. On the basis of above discussion I am of the view that Annex-38 is not an reliable document & no benefit can be extended to the applicant on the basis of this document in view of the fact that he has not proved that he has joined the duty under PWI, Bayana on 21.10.82 prior to existence of Annex-38.

42. On the point of evidential value and credit to be given to the documents produced by applicant, it has been argued by learned representative of the opposite party that documents produced by applicant are false & fabricated & they have been created according to choice of the applicant wherever he felt necessary. He has quoted example of Annex-31 & filed self attested photocopy of Annex-31 on 28.4.16 before the tribunal with allegation that copy of Annex-31 given to opposite party by the applicant is dated 21.6.2000 whereas Annex-31 available on record of the file is dated 11.6.2000. He has alleged that stamps of receiving are forged stamps which has been affixed by applicant on various documents showing that they have been received by railway department. No reply to the above argument has been submitted from the side of the applicant. As far as Annex-31 is concerned it is true that self attested copy filed by learned representative of opposite party is dated 21.6.2000 whereas on record it is dated 11.6.2000. From the above discussion I am of the view that Annex-38 & Annex-31 are documents unreliable in fact & circumstances of the case.

43. In (2001) Supreme Court Cases, 61, Scooters India Ltd.....Appellant v/s M.Mohammad Yaqub And Another.....Respondents, respondent was appointed as unskilled workman w.e.f. 9.9.74 & promoted to semi-skilled workman w.e.f. 7.6.75. On 1.8.76 his name was removed from the roll of company under company's Standing Order No. 9.3.12. The Standing Order reads as under :-

"9.3.12 any workman who remains absent from duty without leave in excess of the period of leave originally sanctioned or subsequently extended for more than 10 consecutive days, he shall be deemed to have left the services of the Company of his own accord, without notice, thereby terminating his contract of service with the company and his name will, accordingly, be struck off the rolls."

44. In dispute raised by respondent the Labour court vide an award dated 20.7.84 held that removal of the name of respondent from the roll of the company was 'retrenchment' & as the provision of law relating to retrenchment was not followed hence, termination was illegal. Accordingly, appellant was directed to reinstate the respondent with continuity of service with full back wages. Writ petition filed before the Hon'ble High Court by the appellant was dismissed on 13.5.98 & appeal against the order of Hon'ble High Court dated 13.5.98 was dismissed by Hon'ble Supreme Court. It was submitted by appellant that respondent had been suspended from 23.6.76 to 7.7.76 & was to join duty after 7.7.76 but he did not join the duty. Respondent was further advised by Chief Personnel Officer personally to join duty on 23.7.76 failing which his name would be removed from the roll. Thereafter, Chief Personnel Officer wrote a letter dated 24.7.76 calling upon respondent to join the duties by 30.7.76 failing which his name would be removed from the roll of the company. Respondent still failed to join the duty by 30.7.76 hence, his name was removed from the roll of the company. It was submitted on behalf of appellant that under above circumstances appellant was entitled to remove the name of the respondent from roll of the company under above mentioned standing Order & such removal did not amount to retrenchment. It has been held in para 11 of the judgement by Hon'ble Supreme Court that there could not be any automatic termination of the respondent on the basis of standing order No. 9.3.12 and the principle of natural justice had to be complied with. It was held by Labour Court that he was not allowed to join duty even though he personally met the Chief Personnel Officer. Respondent in evidence had filed the slip Ex-w-2 which was signed by security Inspector of the company indicating that he had visited the premises of the company in order to join the duty & had met the Chief Personnel Officer. No evidence was led by opposite party that respondent did not visit. The time keeper of the appellant had supported the fact that respondent had worked for more than 240 days within a period of twelve calendar months immediately preceding the date of termination of his service. On the basis of above material the Labour Court came to the conclusion that there was retrenchment without following the provisions of law & as the workman was not allowed to join the duty, appellant was not entitled to utilize Standing order No. 9.3.12 for terminating the services of the respondent. Accordingly, view taken by Labour Court & Hon'ble High Court was confirmed by Hon'ble Supreme Court & appeal of the appellant was dismissed.

45. In the present case of the applicant it has been settled with discussion of the evidence lead by the parties that applicant did not join the duty after selection and medical examination & he has also not proved that he has worked for 240 days immediately preceding the date of his discontinuance from service hence, no benefit in favour of applicant can be derived from the case of Scooters India Ltd.

46. In JT 1999 (2) SC 37, Samishta Dube Appellant v/s City Board, Etawah & Anr..... Respondent, Respondent a post graduate was appointed as a typist/ clerk on 15.12.87 by City Board, Etawah, on daily wage basis & her services were terminated on 12.4.88. In industrial dispute raised by appellant u/s 4-k of U.P. Industrial Disputes Act, 1947 on 7.9.91 it was held by the labour court vide award dated 28.1.93 that termination of the appellant w.e.f. 12.4.88 could not be termed as invalid but the principle of "last come first go" applied even in the case of daily wager, hence, labour court further passed an award to the effect that in case workman junior to the appellant were retained then she must be considered for regularisation by re-appointment on the basis of her seniority.

47. In the writ petition by respondent against award dated 28.1.93 it was held by Hon'ble High Court that City Board, Etawah was not an "industry" hence, appellant could go before the Service Tribunal observing that appellant had worked only for three month & twenty seven days & her employment ended by virtue of condition of her appointment. The Hon'ble High Court was of the view that labour court rightly held that termination was not invalid but direction that appellant should be appointed if any of her junior were working were unjustified when there was no finding as to discrimination. It was also held that question of junior or senior hardly arose in case of daily wage appointments & appellant was not appointed to any regular post in accordance with procedure provided according to rules & regulations. Accordingly, it was held that labour court has no jurisdiction to entertain the dispute & direction of re-appointment was not legally justified. In appeal against the order of Hon'ble High Court it was held by Hon'ble Supreme Court that Hon'ble High Court was wrong in setting aside the order of labour court. Accordingly, order of labour court was restored by Hon'ble Supreme Court & the appellant was held entitled to be re-appointed with all consequential benefits w.e.f. 28.1.93 including back wages.

48. It is important to note that case of Samishta Dube does not involve the question of joining of service after recruitment whereas in the present case issue involved is whether applicant after selection had joined the duty for which the answer is in negative. Accordingly, applicant is not entitled to any benefit from the case cited above & nothing has been alleged by the applicant that in which way citation applies to applicant's case.

49. In JT 2000 (Suppl.2) SC 204, Moolchand Kharati Ram Hospital K. Union.....appellant v/s Labour Commr. & Co..... respondent, reference made to the industrial Tribunal reads as under :-

"Whether the workmen shown in Annexure 'A' are entitled to wages for the lock out period w.e.f. 11.2.1995 and, if so, what directions are necessary in this respect?"

50. A writ petition was filed by third respondent of the appeal i.e. management of the Hospital for quashing the above reference on the ground that real dispute between the parties as to whether a lock out was presumed and the consequential question was referred but not the basic question and, therefore, the reference is bad in law. The Hon'ble Single Judge took the view that the dispute actually referred, did not reflect the real dispute between the parties, because the management had disputed the very existence of lock out hence, Hon'ble High Court issued the writ for quashing the reference. An appeal was preferred by workmen before the Division Bench wherein it was contended from the side of the workmen that relevant material placed before the Government having been considered the real dispute between the parties have been referred to the industrial Tribunal and that the order in question being administrative in nature, could not be interfered with at all. The Hon'ble Division Bench upheld the order of Hon'ble Single Judge. In appeal the view taken by Hon'ble High Court was held justified by Hon'ble Supreme Court & it was held in para 5 as under :-

"In the circumstances, we think the view of the High Court is justified. However, that would not solve the problem of the parties. The proper course to be adopted is to direct the first respondent to take appropriate steps to make a reference to the concerned Tribunal after considering all the relevant material on record in the case. Let such steps be taken within three months from today. The appeals stand disposed of accordingly."

51. In the fact & circumstances of the present case in hand before the tribunal it is clear that the case of Moolchand Kharati Ram Hospital K. Union is irrelevant & inapplicable.

52. In A.I.S.L.J., IX-2004(3), D.B., Indra Perfumery Co. through Sudershab Oberoi...Petitioner v/s Presiding Officer & Ors..... Respondents, the issue involved was as to from which date workman would be entitled to receive wages under section 17-B of Industrial Disputes Act, 1947 namely, whether from the date of award or from the date, writ petition was filed in the Hon'ble High Court. Holding that workman would be entitled to receive the wages from the date of award it was held by Hon'ble Division Bench as under :-

"Under the circumstances, we direct the employer to pay the wages to respondent Nos. 4 to 6 at the rate of last drawn wages for the period from the date of award till the date on which he withdrew the petition from this court. Application stands disposed of with the aforesaid direction."

53. From the fact & circumstances of the case cited above it is clear that cited case has no application in the fact & circumstances of the present case.

54. In 2008 Western Law Cases (Raj.) U.C., 730, State & Ors. ...petitioner v/s Giriraj Prasad & Anr.....respondents, respondent No.1 was engaged as part time class IV employee on 25.1.91 at Primary Health Centre. His services were retrenched without following the provision of section 25-F of Industrial Disputes Act, 1947. Vide award dated 17.10.2002 passed by Judge, Labour Court, Udaipur retrenchment of the petitioner from 1.4.99 was set aside with direction that petitioner will be entitled to reinstatement with 50% back wages. The award of the tribunal was based on the finding of Division Bench decision of Hon'ble High Court of Rajasthan in 1989 (2) RLW 290, Yashwant Singh Yadav vs. State of Rajasthan,D.B., wherein it has been held that even a part time employee is entitled for protection under I.D. Act, 1947 & he is required to be treated as workman. In civil writ petition Against the award of the labour court dated 17.10.2002 it has been held by Hon'ble High Court that no illegality has been committed by labour court, Udaipur & even part time employee is also a workman & is entitled to the benefits of section 25-F of Industrial Disputes Act, 1947.

55. No benefit can be derived in favour of applicant from the case of Giriraj Prasad as cited above.

56. In 2015 (3) WLC (Raj.) 741, Prakash Kachhawa.....Appellant v/s State of Rajasthan & Ors.....Respondents, appellant was selected along with one Sh. Narsingh Ram by direct recruitment & appointed as class IV employee namely Peon on temporary basis in the pay scale of 2550-55-----3200 in the court of Judge, MACT, Ajmer in pursuance to the selections vide advertisement dated 15.3.2000. He was given appointment after his selection following the procedure laid down in the Rajasthan Class IV Service (Recruitment & Conditions of Service) Rules, 1963. The appointment was purely on temporary basis for a period of three months extendable from time to time. According to contention of respondent appellant was absent from duty from 4.9.2000 to 7.9.2000 for which a notice was given to

him on 21.10.2000. He again absented from duty from 18.9.2000 to 21.9.2000 for which a notice was given to him on 22.10.2000. Leave of absence was granted to the appellant for both the period on his submitted explanation in which he had alleged to be ill & had requested for leave of absence.

57. On 16.3.2001, again a notice was given to the appellant that he is wilfully abstaining from duty w.e.f. 8.12.2000. His services were terminated by verbal order dated 31.3.2001. The Judge, MACT vide communication dated 31.3.2001 informed the Law Secretary, Government of Rajasthan, Jaipur that services of appellant has been terminated due to his absence from duty in spite of giving repeated warnings but no formal order of termination in writing was prepared. The only assertion made against termination of the appellant is the abandonment of service by the appellant.

58. In writ petition by appellant petitioner it was stated that he remained present throughout & he was working but his presence was not recorded by respondent after 8.2.2000. It was further alleged that he was sent to perform duties at the residence of the parents of the Judge, MACT at Kota where he was treated badly & was also beaten up by them. After perusal of pleading of both the parties & hearing them it was held by Hon'ble Single Judge that Judge, MACT did not follow the procedure prescribed under rule 86(2) (a) & Rule 86(3) of the Rajasthan Civil Services (Classification, Control & Appeal Rules),1958 which required departmental enquiry before terminating the services of the petitioner. It was further held that it could not be said that the petitioner had abandoned the employment & it was not possible to hold the enquiry or that his conduct was such that no enquiry was contemplated under Rule, 86. Accordingly, the verbal termination order dated 31.3.2001 was quashed & set aside with direction that petitioner shall be reinstated in service with all consequential benefits & back wages limited to 25% along with all other service benefits. Aggrieved by the order of Hon'ble Single Judge an appeal was preferred by both the parties wherein appeal of the Judge, MACT was dismissed & appeal of the appellant was allowed & he was held entitled to reinstatement with 50% of back wages in stead of 25%. The order of Hon'ble Single Judge was modified to that extent.

59. From the above cited case it is evident that appellant was appointed against a substantive post & compliance of rule 86(2) (a) & Rule 86(3) of the Rajasthan Civil Services (Classification, Control & Appeal Rules),1958 was mandatory before terminating his services which required departmental enquiry. As the applicant was terminated by verbal order hence, order of termination was held illegal by Hon'ble High Court. In the present case of applicant Sh. Ramjilal no reference to violation of any disciplinary rules has been made by applicant in his statement of claim dated 15.8.2007 filed on 10.9.2008. In rejoinder reference has been made to rule 9 (25) of Railway Disciplinary & Appeal Rule, 1968 but content of this rule has neither been alleged in rejoinder nor has been filed before the tribunal. As the applicant has not proved the fact of the joining of his duty pursuant to selection list dated 24.12.82 hence, no benefit can be derived by applicant with above cited case.

60. In (2003) 4 Supreme Court Cases 27, S.M. Nilajkar And Others.....Appellants v/s Telecom District Manager, Karnataka..... Respondent, the question before the Hon'ble Supreme Court was whether the workman recruited for discharging temporary job under a project can insist on compliance with section 25-F of Industrial Disputes Act if their services are dispensed with on the project coming to an end. In para 13 of the judgement it has been held as under :-

"13. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:

- i. That the workman was employed in a project or scheme of temporary duration;
- ii. The employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the Scheme or project;
- iii. The employment came to an end simultaneously with the termination of the Scheme or project and consistently with the terms of the contract; and
- iv. the workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment." It was held by Hon'ble Supreme Court that respondent employer has failed in alleging & proving the ingredients of sub-section (bb) & all that has been proved is that the appellants were engaged as casual workers or daily wager in a project. It was further held that for want of proof to attract the applicability of sub-clause(bb), it has to be held that termination of the services of appellant amounted to retrenchment.

61. Allowing the appeal it was held by Hon'ble Supreme Court in para 19 as under :-

"19. For all the foregoing reasons, we are of the opinion that the decision of the Division Bench deserves to be set aside and that of the learned Single Judge restored, except for the finding that the appellants were not project employees."

62. From the fact & circumstance of the case of S.M.Nilajkar it is clear that no benefits can be derived in favour of applicant Sh. Ramjilal who has failed to prove that he joined the service in the railway after preparation of Annex-2 & he was in employment of railway & further that he was discontinued from service by PWI, Bayana.

63. As far as question of violation of section 25-G of I.D.Act is concerned, this relates to retrenchment of a senior employee while retaining the junior employee in the service. Letter dated 29.5.2006 from Senior Section Engineer (Rail Path) Bayana to Assistant Divisional Engineer, Bharatpur filed by the opposite party indicates that in the record available for the period 4.4.80 to 2.7.84 name of applicant Ramji Lal & his brother Chauthi Lal does not appear & they have no trace in the pay register also whereas Sh. Charan Singh s/o Sh. Tejram of Annex-2 was available in pay register. It has been indicated that these two persons neither resumed duty nor received any pay in pursuance of Annex-2. It has also been indicated that applicant Sh. Ramjilal has not made any correspondence with the office in this regard. This further indicates that correspondences Annex-19 to 34 have not been received by the concerned authorities which are false and fabricated as per written argument of opposite party. As the applicant did not join the duty the question of violation of section 25-F or 25-G does not arise. Accordingly, the question of violation of section 25-H does not arise because only a retrenched employee is entitled to receive notice of re-employment in the event of employer going for employment after retrenchment.

64. In para 5 of written argument of applicant a doubt has been shared that in letter dated 19.7.2006 from DRM Office to RLC(Central), Jaipur, during conciliation proceeding, Chauthi Lal has been shown as son of Gopal whereas his father's name is Gulab hence, search of document relating to Chauthi Lal in railway department has not been done properly, I am of the view that this approach in the argument is not tenable in view of other correspondences R-1 to R-4 wherein specific details of Ramji Lal & Chauthi Lal has been indicated properly & these correspondences are prior to 19.7.2006 & dated back to 30.5.2006 & 29.5.2006.

65. Based on the discussions made above I am of the view that applicant Sh. Ramjilal has failed to prove that he was in employment of Electrical & Engineering Department, Kota Division under PWI, Bayana w.e.f 21.10.82 to Dec, 2002. Accordingly, it is held that workman Sh. Ramjilal is not entitled to any relief from the opposite party. Petition of the applicant is dismissed. The reference under adjudication is answered accordingly.

66. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 16 फरवरी, 2017

का.आ. 408.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 14/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/82/2006-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 16th February, 2017

S.O. 408.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of West Central Railway and their workmen, received by the Central Government on 16.02.2017.

[No. L-41012/82/2006-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 14/2007

Reference No. L-41012/82/2006-IR(B-I) dated: 07.03.2007

Shri Chotilal
S/o Gulab
R/o Khedia, Post & Tehsil Masalpur
Distt. Karoli, Karoli (Raj.)

V/s

The Divisional Railway Manager
 West Central Railway, Kota,
 Kota (Rajasthan).

Present :

For the Applicant : Sh. Surendra Kumar Trigunayat, Adv.

For the Non-Applicant : Sh. Om Prakash Ranjika, Adv.

AWARD

Dated : 28.7.2016

1. The Central Government in exercise of powers conferred under clause (d) of Sub-Section 1 & 2 (A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following Industrial dispute to this tribunal for adjudication :-

“Whether claimant workman Shri Chotilal S/o Shri Gulab was in the employment of Electrical & Engineering Deptt., Kota Division under the PWI Bayana from 21.10.82 to December, 2002? If yes, his discontinuance from December, 2002 by Electrical & Engineering Deptt., Kota Division through PWI, Bayana is justified? If not, what relief the workman is entitled to and from which date?”

2. According to statement of claim briefly fact of the case is that applicant/workman Sh. Chauthi Lal S/o Sh. Gulab Meena was appointed on the post of Group D employee in Schedule Tribe quota after selection in Electric & Engineering Department, in Kota division of the Railway.

3. Further, it has been alleged that applicant was selected by selection committee & a list dated 24.2.82 of selected candidates of Schedule Tribe was published by Divisional Office, Kota wherein applicant has been shown at serial No. 26. Applicant was appointed against vacant post after submission of medical fitness, character certificate, caste certificate & certificate related to age.

4. Applicant was appointed under PWI, Bayana on 21.10.82. He has worked till December, 2002 & after December, 2002 respondent stopped taking work from him. Further it has been alleged in para 8 that applicant repeatedly requested the opposite party to take him back in employment & make payment of two month's salary which was not paid and opposite party did not respond to the request of the applicant.

5. Further it has been alleged in para 7 that applicant has worked for more than 240 days every year between the date of appointment & the date of discontinuance, but respondent has neither given any notice before the date of discontinuance or removal nor has made any payment in lieu of notice, thus, respondent has acted in violation of section 25-F of Industrial Disputes Act, 1947. Respondent has not prepared any seniority list before removal of applicant from service & when applicant was removed his juniors were working with respondent, thus, the act of the respondent is in violation of section 25-G of Industrial disputes Act, 1947 & rule 77 of the Industrial disputes (Central) Rules, 1958. It has been further alleged that according to para 2505 of Railway Service Rules before termination of services notice is necessary.

6. After removal of applicant respondent has made new recruitments but applicant workman was not given priority over newly recruited persons, thus, the act of the opposite party is within the ambit of unfair labour practice hence, it has been prayed that applicant be reinstated in the service with all consequential benefits & continuity of service declaring the order of removal as illegal.

7. In reply to statement of claim in preliminary objections it has been alleged that claim has been presented on baseless grounds wherein neither place of service has been given nor name of the department has been given in which applicant claims to have worked. In para wise reply to statement of claim it has been alleged that statements in paras 1 & 2 are based on record and require no answer. Statements in paras 3 to 20 have been denied & against para 21 relating to relief it has been alleged that claim of the applicant may be rejected.

8. It has been alleged that the true fact is that as per record of the respondent applicant workman was never taken on regular work & as he was not taken on work, his engagement by the opposite party till December, 2002 is specifically denied. The applicant was not appointed by opposite party & applicant has not produced any document which may indicate that applicant was given appointment. The statement of the applicant is fabricated that he was engaged in Electrical & Engineering Department of Kota Division. As the applicant was never appointed by opposite party hence, the question of his working for a period of more than 240 days in each calendar year & his discontinuance of the service does not arise.

9. Against para 8 of statement of claim it has been specifically denied that applicant never made any representation before the opposite party from which it could appear that applicant was given appointment & he was not given his pay for any period of his working.

10. Against para 12 it has been specifically alleged that as the applicant was never appointed with opposite party hence, the question of giving a show-cause notice or charge sheet to the applicant does not arise. Against para 13 about unfair labour practice it has been alleged that new recruitments are made by railway recruitment Board after advertisement.

11. In para 14 of statement of claim applicant has alleged that applicant started working under PWI, Bayana w.e.f 21.10.82. Specifically denying the above statements it has been alleged that applicant has not filed any document which shows that he has worked under PWI, Bayana. It has been further alleged that according to letter of the A.E.N., Bharatpur dated 30.5.2006 (Annex-R-2) applicant has never worked under PWI, Bayana. About unnecessary deduction of pay of the applicant & stoppage of the pay of the applicant as alleged in para 15 of the statement of claim it has been alleged by opposite party that no work can be taken from a workman & no deduction or stoppage of pay of a workman can be done by an officer of a department without consent of the railway Administration. It has been further alleged that any payment for work done is made only after verification of the account department.

12. Against para 5 of statement of claim it has been alleged that statement in para 5 is based on record hence, it is admitted that according to office letter dated 24.2.82 candidate listed were to be given appointment after their medical examination & character verification. Applicant was found fit in medical examination on 14.10.82 but after medical examination he did not appear in the office for appointment hence, he was not appointed.

13. It has been prayed that applicant is not entitled to any relief & claim is liable to be dismissed.

14. In rejoinder, in preliminary objection applicant has reiterated his selection vide order dated 24.2.82 as alleged above with further contention that he was posted as Gangman under PWI, Bayana Sh. Satish Chand Sharma & workman junior to him mentioned in the list are still working under opposite party. Further, it has been alleged that contention of the opposite party is wrong that applicant was not discontinued from the service & applicant never joined the duty, the true fact is that applicant served for many years & opposite party removed applicant from service without complying the provision of section 25-F of Industrial Disputes Act & Rule 23 of Work Charge Service Rules, 1964. Further it has been alleged that opposite party has violated provision of Rule 9(25) of Discipline & Appeal Rule, 1968.

15. In rejoinder, in para wise reply against reply to statement of claim applicant has alleged that he was sent to the Divisional Medical Officer, Railway, Gangapur city with medical memo dated 11.10.82 for medical examination & after securing medical fitness certificate dated 14.10.82 deposited it to PWI, Bayana. He was appointed by opposite party on the post of Gangman as regular group D employee.

16. Applicant has alleged in para 3 of rejoinder that he had sent the information to senior officers through UPC, registered A.D. & telegram to draw their attention about his difficulties & he had also submitted the application to the office of DRM securing the receipt of the application & the receipt shall be produced in evidence. In para 4 it has been stated that after securing the medical fitness certificate dated 14.10.82 applicant deposited the fitness certificate with PWI, Bayana Sh. Satish Chandra Sharma & went to carry out his duties. Further the applicant has alleged that at PWI, Bayana he was making signature every day in muster roll (time book) & working with other workman including his juniors after making signature. It has been further alleged that opposite party started making illegal deductions from his pay which was complained by him.

17. In para 6 of rejoinder it has been further alleged that applicant was appointed under PWI, Bayana Sh. Satish Sharma & has not been absent on any occasion during his service till his discontinuance from service. In para 10 of rejoinder it has been alleged that no disciplinary action was taken against him before his removal from service. At the end in rejoinder relief claimed in statement of claim has been reiterated.

18. In support of Statement of claim applicant has filed his affidavit & he has been cross-examined by opposite party. Another witness Sh. Laxminarayan Meena has been produced with his affidavit in support of applicant who has been cross-examined by opposite party. Applicant has filed document Annex-1 to 38 in support of his case.

19. Sh. Om Prakash Meena, Office Superintendent, has been examined as witness on behalf of opposite party who has been cross-examined by applicant. R-1 to R-4 four documents have been filed along with affidavit of Sh. Omprakash Meena as documentary evidence.

20. Heard the argument of learned representative of both the parties. Both the sides have filed their written arguments along with citations.

21. Following cases have been referred from applicant side :-

1. (2001) Supreme Court Cases, 61, Scooters India Ltd.....Appellant v/s M.Mohammad Yaqub And Another.....Respondents.
2. JT 1999 (2) SC 37, Samishta Dube.....Appellant v/s City Board, Etawah & Anr.....Respondents.
3. JT 2000 (Suppl.2) SC 204, Mookchand Kharati Ram Hospital K.UnionAppellant v/s Labour Commr. & Co.Respondent.
4. (2003) 4 SCC 27, S.M.Nilajkar And Others.....Appellant v/s Telecom District Manager, Karnataka.....Respondents.
5. (A.I.S.L.J) IX 2004 (3) 78 Delhi High Court, Indra perfumery Co. Through Sudershab Oberoi.....Petitioner v/s Presiding Officer & Ors.....Respondents.
6. 2008 Western Law Cases (Raj.) UC 730, Rajasthan High Court (Jodhpur), State & Ors.....Petitioner v/s giriraj Prasad & Anr.....Respondents.
7. 2015 (3) WLC (Raj.) 741, Rajasthan High Court (Jaipur Bench), Prakash Kachhawa.....Appellant v/s State of Rajasthan & Ors.....Respondents.

22. It has been argued & has been mentioned in the written argument by learned representative of the applicant that applicant was permanently appointed from Schedule Tribe quota to class IV post vide letter No. E/E 892/2/3 dated 24.2.82 (Annex-2) of DRM Office, Kota. He was issued medical memo (Annex-4) for medical examination by PWI, Bayana & medical fitness certificate(Annex-5) was issued to him by Railway Doctor, Gangapur City & he submitted the medical fitness certificate to PWI Bayana & joined the duty on 15.10.1982 under PWI, Bayana. It has been further argued that he worked till December, 2002 & subsequent to that PWI, Bayana stopped taking work from him & orally directed him not to come to the office of PWI, Bayana for work. Applicant has further argued that he repeatedly requested the management of opposite party to take him back on work & pay him the unpaid part of the wages but opposite party did not care to the applicant's request & applicant was not given any notice or any payment in lieu of notice before terminating his services which violated Section 25-F, 25-G & 25-H of Industrial disputes Act, 1947. Further, it has been mentioned in written argument that at the time of removal from service workman junior to him were working at the time of removal from service & work carried out by the applicant was of permanent nature & that work is still in existence hence, termination of the services of the applicant is unfair & illegal. It has been further said that his removal from the service by oral order is in violation of Article 311(2) of Indian Constitution hence, order of termination be declared illegal with reinstatement of applicant in the service with all consequential benefits & continuity in service.

23. Countering the above argument learned representative of the opposite party has argued & the same has been mentioned in para 1 & 2 of written argument that claim of the applicant is based on fabricated facts & no document has been filed in support of his case. It has been further alleged that applicant has not mentioned the place & department of his working hence, the claim is liable to be dismissed. It has been further argued that applicant was never engaged in the regular work of department & as he was not taken on work hence, whatever statement has been made by applicant about work is baseless. He was never appointed by the department & no such documents relating to appointment has been filed by the applicant which may indicate that he was given appointment. The applicant has fabricated the facts that he was selected in Electrical & Engineering department of Kota Division. Applicant was not selected by any selection committee against any vacant post of the department & no advertisement was issued in this regard. It has also been alleged that no recommended list of candidate was issued by department & no one was appointed on the basis of any such list. It has been further argued that when applicant was not given appointment by the department then question of his working for 240 days & the question of his discontinuance does not arise. It has also been alleged that applicant has not filed any document in support of his contention that he has worked for 240 days in a calendar year or he was given any appointment.

24. It shall appear from above argument of both the parties that there is contention of the applicant that he was appointed by opposite party & he has worked for 240 days in a calendar year & his services were discontinued without any notice in violation of section 25-F,25-G & 25-H of Industrial Disputes Act, 1947. In above circumstance & in view of specific denial by opposite party the burden of proving that applicant was appointed by opposite party & has worked consequent upon his appointment lies on the applicant.

25. From arguments & pleading of both the parties following question arise for determination :-

"Whether claimant workman Sh. Chauthi Lal S/o Sh. Gulab was in the employment of Electrical & Engineering Department, Kota Division under PWI, Bayana w.e.f. 21.10.82 to Dec, 2002 ?"

26. Annexure-2 is the result of selected candidates of Schedule Tribe category who were selected on the basis of selection held on 30.12.81 under crash programme to wipe out the deficiency of ST candidates. It has been mentioned

in Annex-2 that the listed successful candidates will be appointed against the vacancies after verification of their character & antecedents & passing of requisite medical examination. It has been further mentioned that successful candidates listed therein will have to produce the documentary proof of their age & caste as & when required by the Railway Administration & those who failed to submit the certificate as mentioned above will not be offered regular appointment & their name will be deleted from the panel. It has been further mentioned that allotment of respective units & departments to the candidates will be notified separately at later stage.

27. Total 67 candidates have been shown in Annex-2 dated 24.2.82 wherein applicant workman Sh. Chauthi Lal S/o Gulab has been shown at serial No.26 & his real brother Sh. Ramjilal S/o Gulab has been shown at serial No.16. Witness of this case Sh. Laxminarayan S/o Sh. Raghbir Singh has been shown at serial No.55. Annex-1 is letter dated 22.12.81 to applicant Sh. Chauthi Lal at his village address to appear in interview on 30.12.81. The contention of the learned counsel for the applicant is that applicant got himself medically examined by Medical Superintendent, Gangapur City on 14.10.1982 (Annex-5) on the basis of memo issued by Engineering Department, Bayana dated 11.10.82 (Annex-4) & appeared before the PWI, Bayana on 15.10.82 with medical fitness certificates for joining the duty & joined the duty on 15.10.82 under PWI, Bayana as per statement of para one of written argument. Learned representative for opposite party has denied that applicant joined duty before PWI, Bayana & he worked under PWI, Bayana. In para 14 of the reply to statement of claim opposite party has denied that applicant has worked under PWI, Bayana or joined the duty under PWI, Bayana. The burden of proving lies with applicant that he joined the duty under PWI, Bayana & worked there from 21.10.82 till December, 2002 as alleged in statement of claim. No documentary evidence in support of above contention have been filed on record indicating that applicant had joined the duty under PWI, Bayana. It is pertinent to note that as per statement in para 3 of Annex-2 just above the list of candidates it has been mentioned that a separate notification was to be issued on the basis of Annex-2 designating the respective unit & departments allotted to the applicants showing their place of duty. This notification was to take place after submission of proof of age, caste certificate, verification of character & antecedents & passing of medical examination. No such notification or appointment letter has been filed on record by the applicant indicating that he was allocated the place at Bayana under PWI, Bayana. Applicant has also not filed any documentary proof of his joining or working under PWI, Bayana.

28. In his cross-examination at page 4 applicant Chauthi Lal has said that his appointment was not on contract. He has also said that it is wrong to say that his appointment was on contract & he has no proof of working under PWI, Bayana. He has further said that he has filed the certificate of working under PWI, Bayana on the record of the file but again he has subsequently said that it does not matter if there is no proof of working under PWI, Bayana on record of the file. Here, it is to be noted that there is no appointment letter existing in favour of applicant filed on record issued either before or after his medical examination with designated place & department of posting. Further it is to be noted that there is no documentary proof on record filed by applicant or opposite party that applicant has joined his duty under PWI, Bayana or has worked under PWI, Bayana in any year between 21.10.82 to Dec, 2002 except the oral statement & affidavit of the applicant. On page 3 of cross-examination applicant has alleged that on 21.10.82 on his first appointment he had joined duty under PWI Bayana where he worked till 1986 & from 1986 to 2002 he worked in Bayana & around Bayana, thus, he has not mentioned specific places where he has worked after 1986. In written argument applicant has said that he worked from 15.10.82 till Dec, 82 under PWI, Bayana & PWI, Bayana stopped taking work from him after Dec, 2002.

29. In his cross-examination on page 3 he has alleged that he has filed the proof of working till 2002 & at this statement when applicant was asked to show the documents on record which are proof of working then he perused the file & after seeing few pages he alleged that because his vision has become poor he is not able to see properly although the witness was bearing his spectacles at the time of evidence before the tribunal. On page 2 during cross-examination applicant alleged that he was given appointment letter to join the duty in railway & he has filed the appointment letter on record. Thereafter, he was asked to show the appointment letter on record which he could not show after perusing entire file. From above both the statements on pages 2 & 3 it is clear that applicant has alleged false on page 3 that he has filed the document in relation to his working from beginning till 2002 but due to poor vision he is not able to see them properly. The true fact is that there is no document on record to indicate that applicant has joined the duty under PWI Bayana after medical examination. Applicant has neither filed any appointment letter nor any other document indicating his rank, pay scale & place of posting at the time of his joining.

30. As far as the question of applicant working in each calendar year for period for more than 240 days is concerned, in para 7 of statement of claim it has been alleged that he has worked for more than 240 days in every year in his entire service from date of joining till the date of discontinuance & he never remained absent & on page 4 during cross-examination he has alleged that he has filed the proof of working for a period of 240 days in every year but no such record has been filed by the applicant which may indicate that he has worked for 240 days in any calendar year between alleged date of joining on 21.10.82 till his alleged discontinuance in Dec, 2002.

31. As far as the question of any support to the case of the applicant arising out of evidence of Sh. Omprakash Meena, Office Superintendent, witness for opposite party is concerned, the case of the applicant regarding appointment

& working of the applicant in every calendar year for more than 240 days does not find support at any stage of cross-examination. Along with affidavit of Sh. Omprakash in evidence four documents have been filed which are correspondences relating to applicant & his brother Ramji Lal regarding the fact of their working with Railway. Perusal of these four documents indicate that during conciliation proceeding before the Regional Labour Commissioner (Central), Jaipur these documents came in existence in relation to tracing the history of these two persons about any possibility of their engagement with railway from 21.10.1982 till 2002. Letter No. E/1084/1 dated 30.5.2006 is correspondence between Assistant Divisional Engineer, Bharatpur Junction & DRM, Kota wherein it has been mentioned that none out of these two i.e. Sh. Chauthi Lal & Sh. Ramji Lal have worked under PWI Bayana. It has also been alleged that no record related to these two persons is available in the office of PWI Bayana. It has been further suggested in the letter that verification may be made from the account section with pay sheet for the period 21.10.82 to 1986.

32. Letter dated 19.7.2006 addressed to Regional Labour Commissioner (Central), Jaipur is reply to the representation made by applicant before Regional Labour Commissioner (Central), Jaipur/ Conciliation Officer wherein it has been alleged regarding Sh. Chauthi Lal that complaint of the applicant is relating to event wherein nearly twenty four years have passed. Further it has been mentioned that from investigation related to documents submitted by applicant with his representation it was found that applicant was considered for appointment during special recruitment drive for Scheduled Tribe candidates & after issuance of appointment letter he might have been sent for medical examination but he did not report for duty under PWI Bayana after medical examination. It has been further submitted that on the basis of record of the office his name does not appear in the "time book" or "pay register" for the period 1982 to 1986. Further it has been alleged that after laps of 24 years it is not possible to consider the case of the applicant. Another letter dated 22.1.2007 is from DRM (Personnel), Jaipur to GM (Personnel), Jabalpur, in relation to complaint of the applicant before Regional Labour Commissioner (Central), Jaipur. In this letter it has been communicated that after investigation in relation to the complaint of the applicant it was found that he was recruited as a result of special recruitment drive for ST candidates & he was sent for medical examination for engagement in the service but he did not present himself for posting after medical examination hence, he could not be posted. It has been further alleged that after laps of such long period applicant's have applied for appointment which is baseless beside time barred. All above mentioned correspondences which are part of affidavit of witness of opposite party indicate that although applicant was in the selection list of recruitment drive & he was also issued authority for medical examination but he did not report back for posting after securing fitness certificate.

33. From the cross-examination of witness for opposite party Sh. Omprakash Meena there appears nothing favourable to the applicant capable of securing support of the allegations in statement of claim.

34. It is important to mention & take notice that witness Sh. Omprakash Meena has alleged about Annex-2 that it contains the result of screening of candidates who were already working in the railway as casual labourers since before the preparation of the list dated 24.2.82(Annex-2). He has also made a specific mention that Sh. Chauthi Lal, Laxminarayan Meena & Ramji Lal were already working as casual labourers on daily wages prior to their inclusion of name in Annex-2 & they were issued medical examination memo from the office of the PWI Bayana. When witness has been asked that as casual labourer for how long period Sh. Ramji Lal & Chauthi Lal have remained engaged then witness has answered that he cannot answer the question without seeing record which is not available on the file. Here, it is important to take note that this is no one's case that applicant was already working as casual labourer in the Railway prior to preparation of Annex-2. It is also necessary to take note that if the applicant would have been in the service of the railway as casual labourer on daily wage basis then there was no need to sent call letter for interview at home address of the applicant. In the statement of claim also there is no mention that applicant was an employee as casual labourer already working in the railway before preparation of list Annex-2. Witness Sh. Omprakash Meena has admitted in his cross-examination that contention of para 5 of his affidavit is correct wherein it has been alleged that candidates in Annex-2 were to be appointed only after medical fitness & verification of their character & applicant did not appear for appointment after securing medical fitness dated 14.10.82. With contention of fact in para 5 of affidavit of witness it is clear that contention of the witness in cross-examination on page 6 is wrong that applicant was already appointed as casual labourer on daily wage basis before preparation of Annex-2. On page 8 witness has alleged that he cannot say that Sh. Laxminarayan Meena, applicant Sh. Chauthi Lal & his brother Sh. Ramji Lal were working under PWI Bayana or somewhere else but memo of medical examination was issued from Bayana but he cannot say that it was issued from the office of PWI Bayana or from the office of IOW. Accordingly, I am of the view that no benefit can be derived in favour of applicant from the contention of witness Omprakash that applicant was working in the railway under opposite party since the time before preparation of Annex-2 & that part of the statement by witness in cross-examination on page 6 appears to be false.

35. Learned representative for opposite party has argued that Sh. Laxminarayan Meena is an interested witness hence, no reliance should be placed on his testimony. As far as the creditworthiness of witness Sh. Laxminarayan is concerned he is a candidate at serial No.55 of Annex-2 who was working on the post of Marker in railway & has been

compulsorily retired from the service on the ground of misconduct. He is a witness who claims himself to be authorised by applicant Sh. Chauthi Lal Meena to represent his case. When he was objected on 2.3.16 by learned representative of opposite party he alleged that applicant has authorised him to represent his case. Authority of applicant dated 25.8.11 is on record & from perusal of entire file it is evident that applicant has participated in the proceeding by moving many applications & putting appearances on various dates for & on behalf of applicant Sh. Chauthi Lal.

36. As far as gist of the evidence of Sh. Laxminarayan Meena in favour of applicant Sh. Chauthi Lal & its corroborative value is concerned in his affidavit witness has deposed only two points wherein No. (1) is related in support of fact contained in Annex-2 & another fact is that Chauthi Lal was a regular Gangman at Bayana & he was sick w.e.f. 26.9.83 to 9.12.83 & due to sickness he was not taken on work by PWI, Bayana but on the basis of order dated 23.1.84 of Senior DEN, II, Kota he was taken on work & absence of applicant due to sickness was regularised by grant of leave without pay. In cross-examination he has alleged that Annex-2 itself is an appointment letter for Sh. Chauthi Lal. Sh. Laxminarayan Meena has further alleged that he joined the railway service on 21.10.82 on the post of Gangman & he knows Chauthi Lal because he has worked with him & Chauthi Lal was appointed as regular employee with this witness. He has alleged that Annex-2 is the document relating to regular employment of Chauthi Lal but has admitted that nothing has been mentioned in Annex-2 that this is list of regular employment & it is only selection list of candidates. In page 3 of the cross-examination he has alleged that Chauthi Lal was working under Jamadar Kirori Lal & not under Contractor but there is no document on record that Kirori Lal was Jamadar. He has alleged on page 4 that Chauthi Lal was given documents relating to pay etc. by railway department. On page 5 of cross-examination he has alleged that he does not know that Chauthi Lal has worked or not for 240 days continuously prior to his discontinuance from service & if some record in this connection has been filed by Chauthi Lal it may be available on the file.

37. Sh. Chauthi Lal has not filed any documentary evidence on record in relation to working continuously for 240 days. From the above evidence of Sh. Laxminarayan Meena it is clear that statement of Sh. Chauthi Lal does not find any support that he has worked for 240 days continuously in a calendar year immediately preceding the date of his discontinuance. It is also important to note that Chauthi Lal has not filed any document on record which is capable of indicating detail of any single payment made to him on account of his working in the Railway. Further it is important to note that he claims to have worked from 21.10.82 to Dec, 2002 but there is nothing to indicate that he had a GPF account & any amount to the credit of such account which is a mandatory account required to be maintained for any employee.

38. Greater reliance has been placed from the side of applicant on the document Annex-38 which is a letter dated 23.1.84 from Sr. DEN, II, Kota addressd to PWI, Bayana. Strong objections have been raised by learned representative of the opposite party in para 3,4,5,6,8 & 9 of the written argument regarding documents filed by applicant in support of his case alleging them to be forged & baseless having no support to the case of the applicant. In para 5 of the written argument making special reference to Annex-38 it has been argued that the document is self contradictory & has neither been issued by railway nor department of the railway is authorised to issue such document. The document has been fabricated by applicant which is wrong in itself wherein it has been alleged that Chauthi Lal, Gangman working under PWI (place not mentioned) was selected vide letter dated 22.11.83 for traffic department. It has been further mentioned that he was under private Doctor's treatment w.e.f. 26.9.83 to 9.12.83 & he has resumed vide duty certificate No. 471287 dated 9.12.83 issued by DMO & has joined in traffic department from 10.12.83 as per order issued by ACS-KTT vide letter dated 8.12.83. It has been further mentioned that in fact the employee should have obtained relieving letter from the office before joining in traffic department & this laps has been taken up separately from this office & it has been expected that applicant Chauthi Lal may be relieved from the side of PWI, Bayana w.e.f. 9.12.83 (AN) & his service particulars should be sent to ACS, Kota for record. Regarding the period of absence on account of being under treatment from private doctor it has been alleged that it may be treated as leave without pay.

39. Annex-38 as indicated above has been alleged to be a document fabricated by applicant hence, a burden is upon the applicant to prove the creditworthiness of Annex-38. No question has been asked from Omprakash Meena in relation to Annex-38. No document issued by doctor relating to sickness/fitness have been submitted by the applicant. Annex-38 also does not indicate that what was the nature of illness of the applicant & the name of the doctor who treated him. It has been pointed out by learned representative of opposite party that completely identical document in respect of Ramji Lal about the same date of sickness has been filed by Sh. Ramji Lal in his case CGIT case No.22/2007, Sh. Ramji Lal v/s Railway, which is under decision by this tribunal & that is sufficient to conclude that this document is fabricated because it is not practicable that both the brothers fell ill on the same day & secured Annex-38 in the same manner for same period of sickness. By going through the entire fact & circumstances of the case it shall appear that if Annex-38 is treated to be a true document then consequence that would arise is that applicant did not join the duty back under PWI, Bayana after sickness and without relieving from Bayana he joined the Traffic Department w.e.f. 10.12.83. If it is true that he joined Traffic Department on 10.12.83 then his statement is false that he worked under PWI, Bayana from 21.8.1982 till Dec, 2002. Similarly it is also important to note that applicant has given different date of joining at different places and stages of the proceeding. In statement of claim applicant has alleged that

he joined duty on 21.10.82 and in written argument has alleged that he joined duty on 15.10.82. In his affidavit in evidence and rejoinder he has shown his joining on 14.10.82.

40. There appears no reason why Annex-38 has come into existence for creating an unusual way of joining back from sickness by applicant and no reliance can be placed on this document when it has been denied by opposite party that such document has not been issued. Applicant has not proved it's creation and origin by producing witness for its execution. On the basis of above discussion I am of the view that Annex-38 is not an reliable document & no benefit can be extended to the applicant on the basis of this document in view of the fact that he has not proved that he has joined the duty under PWI, Bayana on the basis of Annex-38.

41. On the point of evidential value and credit to be given to the documents produced by applicant, it has been argued by learned representative of the opposite party that documents produced by applicant are false & fabricated & they have been created according to choice of the applicant wherever he felt necessary. He has quoted example of Annex-31 & has filed self attested photocopy of Annex-31 on 28.4.16 before the tribunal with allegation that copy of Annex-31 given to opposite party by applicant is dated 21.6.2000 whereas Annex-31 available on record of the file is dated 11.6.2000. He has alleged that stamps of receiving are forged stamps which has been affixed by applicant on various documents showing that they have been received by railway department. No reply to the above argument has been submitted from the side of the applicant. As far as Annex-31 is concerned it is true that self attested copy filed by learned representative of opposite party is dated 21.6.2000 whereas on record it is dated 11.6.2000.

42. In (2001) Supreme Court Cases, 61, Scooters India Ltd.....Appellant v/s M.Mohammad Yaqub And Another.....Respondents, respondent was appointed as unskilled workman w.e.f. 9.9.74 & promoted to semi-skilled workman w.e.f. 7.6.75. On 1.8.76 his name was removed from the roll of company under company's Standing Order No. 9.3.12. The Standing Order reads as under :-

"9.3.12 any workman who remains absent from duty without leave in excess of the period of leave originally sanctioned or subsequently extended for more than 10 consecutive days, he shall be deemed to have left the services of the Company of his own accord, without notice, thereby terminating his contract of service with the company and his name will, accordingly, be struck off the rolls."

43. In dispute raised by respondent the Labour court vide an award dated 20.7.84 held that removal of the name of respondent from the roll of the company was 'retrenchment' & as the provision of law relating to retrenchment was not followed hence, termination was illegal. Accordingly, appellant was directed to reinstate the respondent with continuity of service with full back wages. Writ petition filed before the Hon'ble High court by the appellant was dismissed on 13.5.98 & appeal against the order of Hon'ble High court dated 13.5.98 was dismissed by Hon'ble supreme Court. It was submitted by appellant that respondent had been suspended from 23.6.76 to 7.7.76 & was to join duty after 7.7.76 but he did not join the duty. Respondent was further advised by Chief Personnel Officer personally to join duty on 23.7.76 failing which his name would be removed from the roll. Thereafter, Chief Personnel Officer wrote a letter dated 24.7.76 calling upon respondent to join the duties by 30.7.76 failing which his name would be removed from the roll of the company. Respondent still failed to join the duty by 30.7.76 hence, his name was removed from the roll of the company. It was submitted on behalf of appellant that under above circumstances appellant was entitled to remove the name of the respondent from roll of the company under above mentioned standing Order & such removal did not amount to retrenchment. It has been held in para 11 of the judgement by Hon'ble supreme Court that there could not be any automatic termination of the respondent on the basis of standing order No. 9.3.12 and the principle of natural justice had to be complied with. It was held by Labour Court that he was not allowed to join duty even though he personally met the Chief Personnel Officer. Respondent in evidence had filed the slip Ex-w-2 which was signed by security Inspector of the company indicating that he had visited the premises of the company in order to join the duty & had met the Chief Personnel Officer. No evidence was led by opposite party that respondent did not visit. The time keeper of the appellant had supported the fact that respondent had worked for more than 240 days within a period of twelve calendar months immediately preceding the date of termination of his service. On the basis of above material the Labour Court came to the conclusion that there was retrenchment without following the provisions of law & as the workman was not allowed to join the duty, appellant was not entitled to utilize Standing order No. 9.3.12 for terminating the services of the respondent. Accordingly, view taken by Labour Court & Hon'ble High court was confirmed by Hon'ble supreme Court & appeal of the appellant was dismissed.

44. In the present case of the applicant it has been settled with discussion of the evidence lead by the parties that applicant did not join the duty after selection and medical examination & he has also not proved that he has worked for 240 days immediately preceding the date of his discontinuance from service hence, no benefit in favour of applicant can be derived from the case of Scooters India Ltd.

45. In JT 1999 (2) SC 37, Samishta Dube Appellant v/s City Board, Etawah & Anr..... Respondent, Respondent a post graduate was appointed as a typist/ clerk on 15.12.87 by City Board, Etawah, on daily wage basis & her services were terminated on 12.4.88. In industrial dispute raised by appellant u/s 4-k of U.P. Industrial Disputes

Act, 1947 on 7.9.91 it was held by the labour court vide award dated 28.1.93 that termination of the appellant w.e.f. 12.4.88 could not be termed as invalid but the principle of “last come first go” applied even in the case of daily wager, hence, labour court further passed an award to the effect that in case workman junior to the appellant were retained then she must be considered for regularisation by re-appointment on the basis of her seniority.

46. In the writ petition by respondent against award dated 28.1.93 it was held by Hon'ble High Court that City Board, Etawah was not an “industry” hence, appellant could go before the Service Tribunal observing that appellant had worked only for three month & twenty seven days & her employment ended by virtue of condition of her appointment. The Hon'ble High Court was of the view that labour court rightly held that termination was not invalid but direction that appellant should be appointed if any of her junior were working were unjustified when there was no finding as to discrimination. It was also held that question of junior or senior hardly arose in case of daily wage appointments & appellant was not appointed to any regular post in accordance with procedure provided according to rules & regulations. Accordingly, it was held that labour court has no jurisdiction to entertain the dispute & direction of re-appointment was not legally justified. In appeal against the order of Hon'ble High Court it was held by Hon'ble Supreme Court that Hon'ble High Court was wrong in setting aside the order of labour court. Accordingly, order of labour court was restored by Hon'ble Supreme Court & the appellant was held entitled to be re-appointed with all consequential benefits w.e.f. 28.1.93 including back wages.

47. It is important to note that case of Samishta Dube does not involve the question of joining of service after recruitment whereas in the present case issue involved is whether applicant after selection had joined the duty for which the answer is in negative. Accordingly, applicant is not entitled to any benefit from the case cited above & nothing has been alleged by the applicant that in which way citation applies to applicant's case.

48. In JT 2000 (Suppl.2) SC 204, Moolchand Kharati Ram Hospital K. Union.....appellant v/s Labour Commr. & Co.....respondent, reference made to the industrial Tribunal reads as under :-

“Whether the workmen shown in Annexure 'A' are entitled to wages for the lock out period w.e.f. 11.2.1995 and, if so, what directions are necessary in this respect?”

49. A writ petition was filed by third respondent of the appeal i.e. management of the Hospital for quashing the above reference on the ground that real dispute between the parties as to whether a lock out was presumed and the consequential question was referred but not the basic question and, therefore, the reference is bad in law. The Hon'ble Single Judge took the view that the dispute actually referred, did not reflect the real dispute between the parties, because the management had disputed the very existence of lock out hence, Hon'ble High Court issued the writ for quashing the reference. An appeal was preferred by workmen before the Division Bench wherein it was contended from the side of the workmen that relevant material placed before the government having been considered the real dispute between the parties have been referred to the industrial Tribunal and that the order in question being administrative in nature, could not be interfered with at all. The Hon'ble Division Bench upheld the order of Hon'ble Single Judge. In appeal the view taken by Hon'ble High Court was held justified by Hon'ble Supreme Court & it was held in para 5 as under :-

“In the circumstances, we think the view of the High Court is justified. However, that would not solve the problem of the parties. The proper course to be adopted is to direct the first respondent to take appropriate steps to make a reference to the concerned Tribunal after considering all the relevant material on record in the case. Let such steps be taken within three months from today. The appeals stand disposed of accordingly.”

50. In the fact & circumstances of the present case in hand before the tribunal it is clear that the case of Moolchand Kharati Ram Hospital K. Union is irrelevant & inapplicable.

51. In A.I.S.L.J., IX-2004(3), D.B., Indra Perfumery Co. through Sudershab Oberoi...Petitioner v/s Presiding Officer & Ors..... Respondents, the issue involved was as to from which date workman would be entitled to receive wages under section 17-B of Industrial Disputes Act, 1947 namely, whether from the date of award or from the date, writ petition was filed in the Hon'ble High Court. Holding that workman would be entitled to receive the wages from the date of award it was held by Hon'ble Division Bench as under :-

“Under the circumstances, we direct the employer to pay the wages to respondent Nos. 4 to 6 at the rate of last drawn wages for the period from the date of award till the date on which he withdrew the petition from this court. Application stands disposed of with the aforesaid direction.”

52. From the fact & circumstances of the case cited above it is clear that cited case has no application in the fact & circumstances of the present case.

53. In 2008 Western Law Cases (Raj.) U.C., 730, State & Ors. ...petitioner v/s Giriraj Prasad & Anr.....respondents, respondent No.1 was engaged as part time class IV employee on 25.1.91 at Primary health centre. His services were retrenched without following the provision of section 25-F of Industrial Disputes Act, 1947. Vide

award dated 17.10.2002 passed by Judge, Labour Court, Udaipur retrenchment of the petitioner from 1.4.99 was set aside with direction that petitioner will be entitled to reinstatement with 50% back wages. The award of the tribunal was based on the finding of Division Bench decision of Hon'ble High Court of Rajasthan in 1989 (2) RLW 290, Yashwant Singh Yadav vs. State of Rajasthan, D.B., wherein it has been held that even a part time employee is entitled for protection under I.D. Act, 1947 & he is required to be treated as workman. In civil writ petition Against the award of the labour court dated 17.10.2002 it has been held by Hon'ble High Court that no illegality has been committed by labour court, Udaipur & even part time employee is also a workman & is entitled to the benefits of section 25-F of Industrial Disputes Act, 1947.

54. No benefit can be derived in favour of applicant from the case of Giriraj Prasad as cited above.

55. In 2015 (3) WLC (Raj.) 741, Prakash Kachhawa.....Appellant v/s State of Rajasthan & Ors.....Respondents, appellant was selected along with one Sh. Narsingh Ram by direct recruitment & appointed as class IV employee namely Peon on temporary basis in the pay scale of 2550-55-----3200 in the court of Judge, MACT, Ajmer in pursuance to the selections vide advertisement dated 15.3.2000. He was given appointment after his selection following the procedure laid down in the Rajasthan Class IV Service (Recruitment & Conditions of Service) Rules, 1963. The appointment was purely on temporary basis for a period of three months extendable from time to time. According to contention of respondent appellant was absent from duty from 4.9.2000 to 7.9.2000 for which a notice was given to him on 21.10.2000. He again absented from duty from 18.9.2000 to 21.9.2000 for which a notice was given to him on 22.10.2000. Leave of absence was granted to the appellant for both the period on his submitted explanation in which he had alleged to be ill & had requested for leave of absence.

56. On 16.3.2001, again a notice was given to the appellant that he is wilfully abstaining from duty w.e.f. 8.12.2000. His services were terminated by verbal order dated 31.3.2001. The Judge, MACT vide communication dated 31.3.2001 informed the Law Secretary, Government of Rajasthan, Jaipur that services of appellant has been terminated due to his absence from duty in spite of giving repeated warnings but no formal order of termination in writing was prepared. The only assertion made against termination of the appellant is the abandonment of service by the appellant.

57. In writ petition by appellant petitioner it was stated that he remained present throughout & he was working but his presence was not recorded by respondent after 8.2.2000. It was further alleged that he was sent to perform duties at the residence of the parents of the Judge, MACT at Kota where he was treated badly & was also beaten up by them. After perusal of pleading of both the parties & hearing them it was held by Hon'ble Single Judge that Judge, MACT did not follow the procedure prescribed under rule 86(2) (a) & Rule 86(3) of the Rajasthan Civil Services (Classification, Control & Appeal Rules),1958 which required departmental enquiry before terminating the services of the petitioner. It was further held that it could not be said that the petitioner had abandoned the employment & it was not possible to hold the enquiry or that his conduct was such that no enquiry was contemplated under Rule, 86. Accordingly, the verbal termination order dated 31.3.2001 was quashed & set aside with direction that petitioner shall be reinstated in service with all consequential benefits & back wages limited to 25% along with all other service benefits. Aggrieved by the order of Hon'ble Single Judge an appeal was preferred by both the parties wherein appeal of the Judge, MACT was dismissed & appeal of the appellant was allowed & he was held entitled to reinstatement with 50% of back wages in stead of 25%. The order of Hon'ble Single Judge was modified to that extent.

58. From the above cited case it is evident that appellant was appointed against a substantive post & compliance of rule 86(2) (a) & Rule 86(3) of the Rajasthan Civil Services (Classification, Control & Appeal Rules),1958 was mandatory before terminating his services which required departmental enquiry. As the applicant was terminated by verbal order hence, order of termination was held illegal by Hon'ble High Court. In the present case of applicant Sh. Chauhi Lal no reference to violation of any disciplinary rules has been made by applicant in his statement of claim dated 15.8.2007 filed on 10.9.2008. In rejoinder reference has been made to rule 9 (25) of Railway Disciplinary & Appeal Rule, 1968 but content of this rule has neither been alleged in rejoinder nor has been filed before the tribunal. As the applicant has not proved the fact of the joining of his duty pursuant to selection list dated 24.12.82 hence, no benefit can be derived by applicant with above cited case.

59. In (2003) 4 Supreme Court Cases 27, S.M. Nilajkar And Others.....Appellants v/s Telecom District Manager, Karnataka..... Respondent, the question before the Hon'ble Supreme Court was whether the workman recruited for discharging temporary job under a project can insist on compliance with section 25-F of Industrial Disputes Act if their services are dispensed with on the project coming to an end. In para 13 of the judgement it has been held as under :-

“ 13. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:

- i. That the workman was employed in a project or scheme of temporary duration;
- ii. The employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project;

iii. The employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract; and

iv. the workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.” It was held by Hon’ble Supreme Court that respondent employer has failed in alleging & proving the ingredients of sub-section (bb) & all that has been proved is that the appellants were engaged as casual workers or daily wager in a project. It was further held that for want of proof to attract the applicability of sub-clause(bb), it has to be held that termination of the services of appellant amounted to retrenchment.

60. Allowing the appeal it was held by Hon’ble Supreme Court in para 19 as under :-

“19. For all the foregoing reasons, we are of the opinion that the decision of the Division Bench deserves to be set aside and that of the learned Single Judge restored, except for the finding that the appellants were not project employees.”

61. From the fact & circumstance of the case of S.M.Nilajkar it is clear that no benefits can be derived in favour of applicant Sh. Chauthi Lal who has failed to prove that he joined the service in the railway after preparation of Annex-2 & he was in employment of railway & further that he was discontinued from service by PWI, Bayana.

62. As far as question of violation of section 25-G of I.D.Act is concerned, this relates to retrenchment of a senior employee while retaining the junior employee in the service. Letter dated 29.5.2006 from Senior Section Engineer (Rail Path) Bayana to Assistant Divisional Engineer, Bharatpur filed by the opposite party indicates that in the record available for the period 4.4.80 to 2.7.84 name of Chauthi Lal & Ramji Lal does not appear & they have no trace in the pay register also whereas Sh. Charan Singh s/o Sh. Tejram of Annex-2 was available in pay register. It has been indicated that these two persons neither resumed duty nor received any pay in pursuance of Annex-2. It has also been indicated that applicant has not made any correspondence with the office in this regard. This further indicates that correspondences Annex-19 to 34 have not been received by the concerned authorities which are false and fabricated as per written argument of opposite party. As the applicant did not join the duty the question of violation of section 25-G does not arise. Accordingly, the question of violation of section 25-H does not arise because only a retrenched employee is only entitled to receive notice of re-employment in the event of employer going for employment after retrenchment.

63. In para 5 of written argument of applicant a doubt has been shared that in letter dated 19.7.2006 from DRM Office to RLC(Central), Jaipur, during conciliation proceeding, Chauthi Lal has been shown as son of Gopal whereas his father’s name is Gulab hence, search of document relating to applicant in railway department has not been done properly, I am of the view that this approach in the argument is not tenable in view of other correspondences R-1 to R-4 wherein specific details of Ramji Lal & Chauthi Lal has been indicated properly & these correspondences are prior to 19.7.2006 & dated back to 30.5.2006 & 29.5.2006.

64. Based on the discussions made above I am of the view that applicant Sh. Chotilal has failed to prove that he was in employment of Electrical & Engineering Department, Kota Division under PWI, Bayana w.e.f 21.10.82 to Dec, 2002. Accordingly, it is held that workman Sh. Chotilal is not entitled to any relief from the opposite party. Petition of the applicant is dismissed. The reference under adjudication is answered accordingly.

65. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 16 फरवरी, 2017

का.आ. 409.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईसीआईसीआई बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 79/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-12012/92/2015-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 16th February, 2017

S.O. 409.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 79/2015) of the Central Government Industrial Tribunal-cum-

Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of ICICI Bank Ltd. and their workmen, received by the Central Government on 16.02.2017.

[No. L-12012/92/2015-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 79/2015

Reference No. L-12012/92/2015-IR(B-I) dated: 07.09.2015

Shri Lala Ram Meena
S/o Shri Bishnaram Meena
Plot No. 246, Balaji Vihar-5,
Kalawala, Tehsil sanganer, Jaipur.

V/s

1. Dy. General Manager
Bombay intelligence security (India) Ltd.
201 senestar, Central Sapine,
Vidhadhar Nagar, Jaipur.
2. Security Officer
ICICI bank Ltd.
Sardar Patel Marg, Near BJP Office
C-Scheme, Jaipur.

AWARD

30.6.2016

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“क्या प्रबंधन आई.सी.आई.सी.आई. बैंक लि., जयपुर के सिक्योरिटी ठेकेदार मै. बॉम्बे इंटेलीजेंस सिक्योरिटी (इंडिया) लि., जयपुर का कर्मकार श्री लालाराम मीणा, सिक्योरिटी गार्ड को मौखिक आदेष दिनांक 07.03.2015 के द्वारा नौकरी से निकाला जाना न्यायोचित एवं न्यायसंगत है? यदि नहीं तो कर्मकार किस अनुतोष को पाने का अधिकारी है?”

2. Pursuant to the receipt of the reference order, registered notices were issued to the parties fixing 1.3.2016 for filing statement of claim. On 1.3.2016 applicant was absent. For Bombay Intelligence Security (India Ltd.), Jaipur, Administrative Officer was present & authority for the Company was filed by him. None appeared for I.C.I.C.I. Bank Ltd. Order was passed to re-issue the notices against applicant & bank fixing 11.4.2016 for filing statement of claim.

3. On 11.4.2016 Presiding Officer was on leave. Applicant was present. None appeared for I.C.I.C.I. Bank. Representative of opposite party No.2, Bombay Intelligence Security (India Ltd.), Jaipur, was present. 15.6.2016 was next date fixed for filing statement of claim. On 15.6.2016 presiding officer was on leave. Applicant was absent. Sh. Rajvir Singh Yadav, Administrative Officer, was present for Bombay Intelligence Security (India Ltd.), Jaipur. None appeared for I.C.I.C.I. Bank. Documents were filed by Sh. Rajvir Singh Yadav which were taken on record. 28.6.2016 was next date fixed for filing statement of claim & further proceeding.

4. On 28.6.2016 applicant was absent. DJM & Sh. Rajvir Singh, Administrative Officer were present for Bombay Intelligence Security (India Ltd.), Jaipur. None appeared for I.C.I.C.I. Bank Ltd. Service was held sufficient against I.C.I.C.I. Bank Ltd. Sh. Rajvir Singh, Administrative Officer alleged that applicant is not to contest the case because all the dues against the applicant have been cleared. Looking into the next date 30.6.2016 fixed for Lok- Adalat, Sh. Rajvir Singh, alleged that this case may be fixed for disposal in Lok-Adalat & he will ensure the presence of applicant in Lok-Adalat on 30.6.2016. Accordingly, after perusal of file & earlier documents submitted by security agency about clearance of dues of the applicant case was fixed for disposal in Lok-Adalat on 30.6.2016.

5. On 30.6.2016 Sh. Rajvir Singh Yadav, Administrative Officer for Bombay Intelligence Security (India Ltd.), Jaipur appeared & submitted application for disposal of case. None appeared for & on behalf of I.C.I.C.I. Bank Ltd. & applicant. Heard the applicant Sh. R Sh. Rajvir Singh Yadav, Administrative Officer on his application to decide the case in Lok-Adalat. It has been alleged in his application dated 30.6.2016 that the security agency has cleared the demands made by applicant & dues of the applicant against the security agency & applicant has no complaint against

the company now. He has further alleged that he contacted the applicant who assured his appearance on 30.6.2016 in Lok-Adalat but he has not turned up in spite of assurance. It has been further alleged that applicant does not want to contest the case & the case may be closed. From perusal of file it is evident that on 15.6.2016 Sh. Rajvir Singh Yadav Administrative Officer has filed following six documents as mentioned below :-

- (I). Information to the tribunal by security agency indicating that five employees namely Lala Ram Meena, Moti Lal Meena, Kishan Gopal Meena, Nawal Kishor & Maya Ram Meena have resigned from the service of the company & relieved on 31.12.2015 & they have been paid their dues in full & final settlement & nothing is due against the company. It has been further alleged that applicants are no more employee of the company hence case may be closed. Lala Ram Meena is the applicant in the present case.
- (II). This is an application by applicant Lala Ram Meena dated 31.12.2015 addressed to Regional Labour Commissioner (Central), Jaipur requesting that complaint dated 2.3.2015 made by applicant against the company may be dismissed. It has been alleged that company has cleared the dues of the applicant & applicant now has no complaint against the company. He had made a complaint dated 2.3.2015 before the RLC(C), Jaipur & applicant is withdrawing his compliant & he will not make any complaint in future against the company before any court or Labour Court.
- (III). This document is Photocopy of Adhar Card of the applicant to support the genuiness of the application of the applicant.
- (IV). This is an application of resignation addressed to the security company wherein it has been alleged that due to domestic problems applicant does not want to serve the company anymore & he has no complaint against the company. He is withdrawing his complaint which he had made earlier hence, it is requested that his full & final payment may be made.
- (V). Receipt of full & final due from company signed by applicant on revenue stamp in presence of two witnesses.
- (VI). Cheque of corporation Bank relating to money received as full & final satisfaction.

6. After perusal of above documents it appears that applicant is not interested in pursuing the case further hence, instead of passing "No Claim Award" case was disposed in the Lok-Adalat with order as mentioned below :-

30.06.2016 पत्रावली आज लोक अदालत में प्रस्तुत हुई। पुकार पर विपक्ष की तरफ से बम्बे इन्टेलिजेन्स सिक्यूरिटी (इण्डिया) लिमिटेड के लिए श्री राजवीर सिंह यादव, प्रषासनिक अधिकारी उपस्थित है। ऐसे पक्षकार अनुपस्थित हैं।

आज विपक्षी बम्बे इन्टेलिजेन्स सिक्यूरिटी (इण्डिया) लिमिटेड की तरफ से आवेदन प्रस्तुत हुई कि मुकदमे के प्रार्थी मुकदमा नहीं लड़ना चाहते हैं इसलिए मुकदमे को बन्द कर दिया जाय क्योंकि याचिकाकर्ता द्वारा किये गये मॉग और उनका बकाया हिसाब कर दिया गया है। याची को कम्पनी से कोई विकायत नहीं है तथा यह मुकदमा नहीं लड़ना चाहते हैं। यह भी कहा है कि याची से सम्पर्क कर प्रार्थी ने न्यायालय में सुलह हेतु उपस्थित होने के लिए कहा लेकिन "हॉ" कहने के बाद भी वे न्यायालय में उपस्थित नहीं हुए।

मैंने पत्रावली का अवलोकन किया। पत्रावली पर विपक्ष ने उभय पक्ष द्वारा विवाद समाप्त होने की लिखित घोषणा तथा क्षत्रीय श्रम आयुक्त (केन्द्रीय) जयपुर को प्रार्थी द्वारा प्रस्तुत विवाद को निरस्त करने की आवेदन प्रस्तुत की है जो दिनांकित 31.12.2015 है। उक्त स्थिति से यह जाहिर है कि प्रार्थी को मुकदमा आगे चलाने में रुचि नहीं है, अतः आगे की कार्यवाही बन्द की जाती है तथा पत्रावली एवार्ड हेतु आरक्षित की जाती हैं।

7. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 16 फरवरी, 2017

का.आ. 410.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईसीआईसीआई बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 84/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-12012/91/2015-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 16th February, 2017

S.O. 410.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 84/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of ICICI Bank Ltd. and their workmen, received by the Central Government on 16.02.2017.

[No. L-12012/91/2015-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 84/2015

Reference No. L-12012/91/2015-IR(B-I) dated: 07.09.2015

Shri Naval Kishore Sharma
S/o Shri Ramababu Sharma
87, Bhraman Mohalla, gusyari,
Bharatpur

V/s

1. Dy. General Manager
Bombay intelligence security (India) Ltd.
201 senestar, Central Sapine,
Vidhadhar Nagar, Jaipur.
2. Security Officer
ICICI Bank Ltd.
Sardar Patel Marg, Near BJP Office
C-Scheme, Jaipur.

AWARD

30.6.2016

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“क्या प्रबंधन आई.सी.आई.सी.आई. बैंक लि., जयपुर के सिक्योरिटी ठेकेदार मै. बॉम्बे इंटेलीजेंस सिक्योरिटी (इंडिया) लि., जयपुर का कर्मकार श्री नवलकिषोर षमा, सिक्योरिटी गार्ड को मौखिक आदेष दिनांक 28.11.2014 के द्वारा नौकरी से निकाला जाना न्यायोचित एवं न्यायसंगत है? यदि नहीं तो कर्मकार किस अनुतोष को पाने का अधिकारी है?”

2. Pursuant to the receipt of the reference order, registered notices were issued to the parties fixing 1.3.2016 for filing statement of claim. On 1.3.2016 applicant was absent. For Bombay Intelligence Security (India Ltd.), Jaipur, Administrative Officer was present & authority for the Company was filed by him. None appeared for I.C.I.C.I. Bank Ltd. Order was passed to re-issue the notices against applicant & bank fixing 11.4.2016 for filing statement of claim.

3. On 11.4.2016 Presiding Officer was on leave. Applicant was present. None appeared for I.C.I.C.I. Bank. Representative of opposite party No.2, Bombay Intelligence Security (India Ltd.), Jaipur, was present. 15.6.2016 was next date fixed for filing statement of claim. On 15.6.2016 presiding officer was on leave. Applicant was absent. Sh. Rajvir Singh Yadav, Administrative Officer, was present for Bombay Intelligence Security (India Ltd.), Jaipur. None appeared for I.C.I.C.I. Bank. Documents were filed by Sh. Rajvir Singh Yadav which were taken on record. 28.6.2016 was next date fixed for filing statement of claim & further proceeding.

4. On 28.6.2016 applicant was absent but service was held sufficient against him because notice sent against him on second occasion did not return back. DJM & Sh. Rajvir Singh, Administrative Officer were present for Bombay Intelligence Security (India Ltd.), Jaipur. None appeared for I.C.I.C.I. Bank Ltd. Service was held sufficient against I.C.I.C.I. Bank Ltd. Sh. Rajvir Singh, Administrative Officer alleged that applicant is not to contest the case because all the dues against the applicant have been cleared. Looking into the next date 30.6.2016 fixed for Lok- Adalat, Sh. Rajvir

Singh, alleged that this case may be fixed for disposal in Lok-Adalat & he will ensure the presence of applicant in Lok-Adalat on 30.6.2016. Accordingly, after perusal of file & earlier documents submitted by security agency about clearance of dues of the applicant case was fixed for disposal in Lok-Adalat on 30.6.2016.

5. On 30.6.2016 Sh. Rajvir Singh Yadav, Administrative Officer for Bombay Intelligence Security (India Ltd.), Jaipur appeared & submitted application for disposal of case. None appeared for & on behalf of I.C.I.C.I. Bank Ltd. & applicant. Heard the applicant Sh. R Sh. Rajvir Singh Yadav, Administrative Officer on his application to decide the case in Lok-Adalat. It has been alleged in his application dated 30.6.2016 that the security agency has cleared the demands made by applicant & dues of the applicant against the security agency & applicant has no complaint against the company now. He has further alleged that he contacted the applicant who assured his appearance on 30.6.2016 in Lok-Adalat but he has not turned up in spite of assurance. It has been further alleged that applicant does not want to contest the case & the case may be closed. From perusal of file it is evident that on 15.6.2016 Sh. Rajvir Singh Yadav Administrative Officer has filed following six documents as mentioned below :-

- (I). Information to the tribunal by security agency indicating that five employees namely Lala Ram Meena, Moti Lal Meena, Kishan Gopal Meena, Nawal Kishor & Maya Ram Meena have resigned from the service of the company & relieved on 31.12.2015 & they have been paid their dues in full & final settlement & nothing is due against the company. It has been further alleged that applicants are no more employee of the company hence case may be closed. Naval Kishore Sharma is the applicant in the present case.
- (II). This is an application by applicant Naval Kishore Sharma dated 31.12.2015 addressed to Regional Labour Commissioner (Central), Jaipur requesting that complaint dated 2.3.2015 made by applicant against the company may be dismissed. It has been alleged that company has cleared the dues of the applicant & applicant now has no complaint against the company. He had made a complaint dated 2.3.2015 before the RLC(C), Jaipur & applicant is withdrawing his complaint & he will not make any complaint in future against the company before any court or Labour Court.
- (III). This document is Photocopy of Adhar Card of the applicant to support the genuiness of the application of the applicant.
- (IV). This is an application of resignation addressed to the security company wherein it has been alleged that due to domestic problems applicant does not want to serve the company anymore & he has no complaint against the company. He is withdrawing his complaint which he had made earlier hence, it is requested that his full & final payment may be made.
- (V). Receipt of full & final due from company signed by applicant on revenue stamp in presence of two witnesses.
- (VI). Cheque of corporation Bank relating to money received as full & final satisfaction.

6. After perusal of above documents it appears that applicant is not interested in pursuing the case further hence, instead of passing "No Claim Award" case was disposed in the Lok-Adalat with order as mentioned below :-

30.06.2016 पत्रावली आज लोक अदालत में प्रस्तुत हुई। पुकार पर विपक्ष की तरफ से बम्बे इन्टेलिजेन्स सिक्यूरिटी (इण्डिया) लिमिटेड के लिए श्री राजवीर सिंह यादव, प्रषासनिक अधिकारी उपस्थित है। ऐष पक्षकार अनुपस्थित है।

आज विपक्षी बम्बे इन्टेलिजेन्स सिक्यूरिटी (इण्डिया) लिमिटेड की तरफ से आवेदन प्रस्तुत हुई कि मुकद्दमे के प्रार्थी मुकद्दमा नहीं लड़ना चाहते हैं इसलिए मुकद्दमे को बन्द कर दिया जाय क्योंकि याचिकाकर्ता द्वारा किये गये मांग और उनका बकाया हिसाब कर दिया गया है। याची को कम्पनी से कोई विकायत नहीं है तथा यह मुकद्दमा नहीं लड़ना चाहते हैं। यह भी कहा है कि याची से सम्पर्क कर प्रार्थी ने न्यायालय में सुलह हेतु उपस्थित होने के लिए कहा लेकिन "हॉ" कहने के बाद भी वे न्यायालय में उपस्थित नहीं हुए।

मैंने पत्रावली का अवलोकन किया। पत्रावली पर विपक्ष ने उभय पक्ष द्वारा विवाद समाप्त होने की लिखित घोषणा तथा क्षेत्रीय श्रम आयुक्त (केन्द्रीय) जयपुर को प्रार्थी द्वारा प्रस्तुत विवाद को निरस्त करने की आवेदन प्रस्तुत की है जो दिनांकित 31.12.2015 है। उक्त स्थिति से यह जाहिर है कि प्रार्थी को मुकद्दमा आगे चलाने में रुचि नहीं है, अतः आगे की कार्यवाही बन्द की जाती है तथा पत्रावली एवार्ड हेतु आरक्षित की जाती हैं।

7. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 16 फरवरी, 2017

का.आ. 411.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईसीआईसीआई बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 86/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-12012/95/2015-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 16th February, 2017

S.O. 411.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 86/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of ICICI Bank Ltd. and their workmen, received by the Central Government on 16.02.2017.

[No. L-12012/95/2015-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 86/2015

Reference No. L-12012/95/2015-IR(B-I) dated: 07.09.2015

Shri Motilal Meena
S/o Shri Bishnaraam Meena
Plot No. 246, Balaji Vihar-5 Kalawala,
Tehsil Sanganer, Jhile Jaipur,
Jaipur

V/s

1. Dy. General Manager
Bombay intelligence security (India) Ltd.
201 senestar, Central Sapine,
Vidhadhar Nagar, Jaipur.
2. Security Officer
ICICI bank Ltd.
Sardar Patel Marg, Near BJP Office
C-Scheme, Jaipur.

AWARD

30.6.2016

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“क्या प्रबंधन आई.सी.आई.सी.आई. बैंक लि., जयपुर के सिक्योरिटी टेकेदार मै. बॉम्बे इंटेलीजेंस सिक्योरिटी (इंडिया) लि., जयपुर का कर्मकार श्री मोतीलाल मीणा, सिक्योरिटी गार्ड को मौखिक आदेष दिनांक 03.02.2015 के द्वारा नौकरी से निकाला जाना न्यायोचित एवं न्यायसंगत है? यदि नहीं तो कर्मकार किस अनुतोष को पाने का अधिकारी है?”

2. Pursuant to the receipt of the reference order, registered notices were issued to the parties fixing 1.3.2016 for filing statement of claim. On 1.3.2016 applicant was absent. For Bombay Intelligence Security (India Ltd.), Jaipur, Administrative Officer was present & authority for the Company was filed by him. None appeared for I.C.I.C.I. Bank Ltd. Order was passed to re-issue the notices against applicant & bank fixing 11.4.2016 for filing statement of claim.

3. On 11.4.2016 Presiding Officer was on leave. Applicant was present. None appeared for I.C.I.C.I. Bank. Representative of opposite party No.2, Bombay Intelligence Security (India Ltd.), Jaipur, was present. 15.6.2016 was next date fixed for filing statement of claim. On 15.6.2016 presiding officer was on leave. Applicant was absent. Sh. Rajvir Singh Yadav, Administrative Officer, was present for Bombay Intelligence Security (India Ltd.), Jaipur. None appeared for I.C.I.C.I. Bank. Documents were filed by Sh. Rajvir Singh Yadav which were taken on record. 28.6.2016 was next date fixed for filing statement of claim & further proceeding.

4. On 28.6.2016 applicant was absent. DJM & Sh. Rajvir Singh, Administrative Officer were present for Bombay Intelligence Security (India Ltd.), Jaipur. None appeared for I.C.I.C.I. Bank Ltd. Service was held sufficient against I.C.I.C.I. Bank Ltd. Sh. Rajvir Singh, Administrative Officer alleged that applicant is not to contest the case because all the dues against the applicant have been cleared. Looking into the next date 30.6.2016 fixed for Lok- Adalat, Sh. Rajvir Singh, alleged that this case may be fixed for disposal in Lok-Adalat & he will ensure the presence of applicant in Lok-Adalat on 30.6.2016. Accordingly, after perusal of file & earlier documents submitted by security agency about clearance of dues of the applicant case was fixed for disposal in Lok-Adalat on 30.6.2016.

5. On 30.6.2016 Sh. Rajvir Singh Yadav, Administrative Officer for Bombay Intelligence Security (India Ltd.), Jaipur appeared & submitted application for disposal of case. None appeared for & on behalf of I.C.I.C.I. Bank Ltd. & applicant. Heard the applicant Sh. R Sh. Rajvir Singh Yadav, Administrative Officer on his application to decide the case in Lok-Adalat. It has been alleged in his application dated 30.6.2016 that the security agency has cleared the demands made by applicant & dues of the applicant against the security agency & applicant has no complaint against the company now. He has further alleged that he contacted the applicant who assured his appearance on 30.6.2016 in Lok-Adalat but he has not turned up in spite of assurance. It has been further alleged that applicant does not want to contest the case & the case may be closed. From perusal of file it is evident that on 15.6.2016 Sh. Rajvir Singh Yadav Administrative Officer has filed following six documents as mentioned below :-

- (I). Information to the tribunal by security agency indicating that five employees namely Lala Ram Meena, Moti Lal Meena, Kishan Gopal Meena, Nawal Kishor & Maya Ram Meena have resigned from the service of the company & relieved on 31.12.2015 & they have been paid their dues in full & final settlement & nothing is due against the company. It has been further alleged that applicants are no more employee of the company hence case may be closed. Motilal Meena is the applicant in the present case.
- (II). This is an application by applicant Motilal Meena dated 31.12.2015 addressed to Regional Labour Commissioner (Central), Jaipur requesting that complaint dated 2.3.2015 made by applicant against the company may be dismissed. It has been alleged that company has cleared the dues of the applicant & applicant now has no complaint against the company. He had made a complaint dated 2.3.2015 before the RLC(C), Jaipur & applicant is withdrawing his complaint & he will not make any complaint in future against the company before any court or Labour Court.
- (III). This document is Photocopy of Adhar Card of the applicant to support the genuiness of the application of the applicant.
- (IV). This is an application of resignation addressed to the security company wherein it has been alleged that due to domestic problems applicant does not want to serve the company anymore & he has no complaint against the company. He is withdrawing his complaint which he had made earlier hence, it is requested that his full & final payment may be made.
- (V). Receipt of full & final due from company signed by applicant on revenue stamp in presence of two witnesses.
- (VI). Cheque of corporation Bank relating to money received as full & final satisfaction.

6. After perusal of above documents it appears that applicant is not interested in pursuing the case further hence, instead of passing "No Claim Award" case was disposed in the Lok-Adalat with order as mentioned below :-

30.06.2016 पत्रावली आज लोक अदालत में प्रस्तुत हुई। पुकार पर विपक्ष की तरफ से बम्बे इन्टेरिजेन्स सिक्यूरिटी (इण्डिया) लिमिटेड के लिए श्री राजवीर सिंह यादव, प्रशासनिक अधिकारी उपस्थित है। ऐष पक्षकार अनुपस्थित है।

आज विपक्षी बम्बे इन्टेरिजेन्स सिक्यूरिटी (इण्डिया) लिमिटेड की तरफ से आवेदन प्रस्तुत हुई कि मुकदमें के प्रार्थी मुकदमा नहीं लड़ना चाहते हैं इसलिए मुकदमें को बन्द कर दिया जाय क्योंकि याचिकाकर्ता द्वारा किये गये मौंग और उनका बकाया हिसाब कर दिया गया है। याची को कम्पनी से कोई विकायत नहीं है तथा यह मुकदमा नहीं लड़ना चाहते हैं। यह भी कहा है कि याची से सम्पर्क कर प्रार्थी ने न्यायालय में सुलह हेतु उपस्थित होने के लिए कहा लेकिन "हॉ" कहने के बाद भी वे न्यायालय में उपस्थित नहीं हुए।

मैंने पत्रावली का अवलोकन किया। पत्रावली पर विपक्ष ने उभय पक्ष द्वारा विवाद समाप्त होने की लिखित घोषणा तथा क्षेत्रीय श्रम आयुक्त (केन्द्रीय) जयपुर को प्रार्थी द्वारा प्रस्तुत विवाद को निरस्त करने की आवेदन प्रस्तुत की है जो दिनांकित 31.12.2015 है। उक्त स्थिति से यह जाहिर है कि प्रार्थी को मुकदमा आगे चलाने में रुचि नहीं है, अतः आगे की कार्यवाही बन्द की जाती है तथा पत्रावली एवार्ड हेतु आरक्षित की जाती है।

7. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 16 फरवरी, 2017

का.आ. 412.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईसीआईसीआई बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 85/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-12012/94/2015-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 16th February, 2017

S.O. 412.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 85/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of ICICI Bank Ltd. and their workmen, received by the Central Government on 16.02.2017.

[No. L-12012/94/2015-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 85/2015

Reference No. L-12012/94/2015-IR(B-I) dated: 07.09.2015

Shri Mayaram Meena
S/o Shri Bardaram Meena
Gram Kharoi, Post-Ghad,
Tehsil Dunia Jila Tonk

V/s

1. Dy. General Manager
Bombay intelligence security (India) Ltd.
201 senestar, Central Sapine,
Vidhadhar Nagar, Jaipur.
2. Security Officer
ICICI bank Ltd.
Sardar Patel Marg, Near BJP Office
C-Scheme, Jaipur.

AWARD

30.6.2016

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“क्या प्रबंधन आई.सी.आई.सी.आई. बैंक लि., जयपुर के सिक्योरिटी टेकेदार मै. बॉम्बे इंटेलीजेंस सिक्योरिटी (इंडिया) लि., जयपुर का कर्मकार श्री मायाराम मीणा, सिक्योरिटी गार्ड को मौखिक आदेष दिनांक 19.06.2014 के द्वारा नौकरी से निकाला जाना न्यायोचित एवं न्यायसंगत है? यदि नहीं तो कर्मकार किस अनुतोष को पाने का अधिकारी है?”

2. Pursuant to the receipt of the reference order, registered notices were issued to the parties fixing 1.3.2016 for filing statement of claim. On 1.3.2016 applicant was absent. For Bombay Intelligence Security (India Ltd.), Jaipur, Administrative Officer was present & authority for the Company was filed by him. None appeared for I.C.I.C.I. Bank Ltd. Order was passed to re-issue the notices against applicant & bank fixing 11.4.2016 for filing statement of claim.

3. On 11.4.2016 Presiding Officer was on leave. Applicant was present. None appeared for I.C.I.C.I. Bank. Representative of opposite party No.2, Bombay Intelligence Security (India Ltd.), Jaipur, was present. 15.6.2016 was next date fixed for filing statement of claim. On 15.6.2016 presiding officer was on leave. Applicant was absent. Sh. Rajvir Singh Yadav, Administrative Officer, was present for Bombay Intelligence Security (India Ltd.), Jaipur. None appeared for I.C.I.C.I. Bank. Documents were filed by Sh. Rajvir Singh Yadav which were taken on record. 28.6.2016 was next date fixed for filing statement of claim & further proceeding.

4. On 28.6.2016 applicant was absent but service was held sufficient against him because he has received the notice twice. DJM & Sh. Rajvir Singh, Administrative Officer were present for Bombay Intelligence Security (India Ltd.), Jaipur. None appeared for I.C.I.C.I. Bank Ltd. Service was held sufficient against I.C.I.C.I. Bank Ltd. Sh. Rajvir Singh, Administrative Officer alleged that applicant is not to contest the case because all the dues against the applicant have been cleared. Looking into the next date 30.6.2016 fixed for Lok- Adalat, Sh. Rajvir Singh, alleged that this case may be fixed for disposal in Lok-Adalat & he will ensure the presence of applicant in Lok-Adalat on 30.6.2016. Accordingly, after perusal of file & earlier documents submitted by security agency about clearance of dues of the applicant case was fixed for disposal in Lok-Adalat on 30.6.2016.

5. On 30.6.2016 Sh. Rajvir Singh Yadav, Administrative Officer for Bombay Intelligence Security (India Ltd.), Jaipur appeared & submitted application for disposal of case. None appeared for & on behalf of I.C.I.C.I. Bank Ltd. & applicant. Heard the applicant Sh. R Sh. Rajvir Singh Yadav, Administrative Officer on his application to decide the case in Lok-Adalat. It has been alleged in his application dated 30.6.2016 that the security agency has cleared the demands made by applicant & dues of the applicant against the security agency & applicant has no complaint against the company now. He has further alleged that he contacted the applicant who assured his appearance on 30.6.2016 in Lok-Adalat but he has not turned up in spite of assurance. It has been further alleged that applicant does not want to contest the case & the case may be closed. From perusal of file it is evident that on 15.6.2016 Sh. Rajvir Singh Yadav Administrative Officer has filed following six documents as mentioned below :-

- (I). Information to the tribunal by security agency indicating that five employees namely Lala Ram Meena, Moti Lal Meena, Kishan Gopal Meena, Nawal Kishor & Maya Ram Meena have resigned from the service of the company & relieved on 31.12.2015 & they have been paid their dues in full & final settlement & nothing is due against the company. It has been further alleged that applicants are no more employee of the company hence case may be closed. Mayaram Meena is the applicant in the present case.
- (II). This is an application by applicant Mayaram Meena dated 31.12.2015 addressed to Regional Labour Commissioner (Central), Jaipur requesting that complaint dated 2.3.2015 made by applicant against the company may be dismissed. It has been alleged that company has cleared the dues of the applicant & applicant now has no complaint against the company. He had made a complaint dated 2.3.2015 before the RLC(C), Jaipur & applicant is withdrawing his complaint & he will not make any complaint in future against the company before any court or Labour Court.
- (III). This document is Photocopy of Adhar Card of the applicant to support the genuiness of the application of the applicant.
- (IV). This is an application of resignation addressed to the security company wherein it has been alleged that due to domestic problems applicant does not want to serve the company anymore & he has no complaint against the company. He is withdrawing his complaint which he had made earlier hence, it is requested that his full & final payment may be made.
- (V). Receipt of full & final due from company signed by applicant on revenue stamp in presence of two witnesses.
- (VI). Cheque of corporation Bank relating to money received as full & final satisfaction.

6. After perusal of above documents it appears that applicant is not interested in pursuing the case further hence, instead of passing "No Claim Award" case was disposed in the Lok-Adalat with order as mentioned below :-

30.06.2016 पत्रावली आज लोक अदालत में प्रस्तुत हुई। पुकार पर विपक्ष की तरफ से बम्बे इन्टेलिजेन्स सिक्यूरिटी (इण्डिया) लिमिटेड के लिए श्री राजवीर सिंह यादव, प्रषासनिक अधिकारी उपस्थित है। ऐष पक्षकार अनुपस्थित है।

आज विपक्षी बम्बे इन्टेलिजेन्स सिक्यूरिटी (इण्डिया) लिमिटेड की तरफ से आवेदन प्रस्तुत हुई कि मुकदमे के प्रार्थी मुकदमा नहीं लड़ना चाहते हैं इसलिए मुकदमे को बन्द कर दिया जाय क्योंकि याचिकाकर्ता द्वारा किये गये मॉग और उनका बकाया हिसाब कर दिया गया है। याची को कम्पनी से कोई षिकायत नहीं है तथा यह मुकदमा नहीं लड़ना चाहते हैं। यह भी कहा है कि याची से सम्पर्क कर प्रार्थी ने न्यायालय में सुलह हेतु उपस्थित होने के लिए कहा लेकिन "हाँ" कहने के बाद भी वे न्यायालय में उपस्थित नहीं हुए।

मैंने पत्रावली का अवलोकन किया। पत्रावली पर विपक्ष ने उभय पक्ष द्वारा विवाद समाप्त होने की लिखित घोषणा तथा क्षेत्रीय श्रम आयुक्त (केन्द्रीय) जयपुर को प्रार्थी द्वारा प्रस्तुत विवाद को निरस्त करने की आवेदन प्रस्तुत की है जो दिनांकित 31.12.2015 है। उक्त स्थिति से यह जाहिर है कि प्रार्थी को मुकदमा आगे चलाने में रुचि नहीं है, अतः आगे की कार्यवाही बन्द की जाती है तथा पत्रावली एवार्ड हेतु आरक्षित की जाती हैं।

7. Award as above.

नई दिल्ली, 16 फरवरी, 2017

का.आ. 413.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बड़ौदा राजस्थान क्षेत्रीय ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 70/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-12011/47/2014-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 16th February, 2017

S.O. 413.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 70/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of Baroda Rajasthan Kshetriya Gramin Bank and their workmen, received by the Central Government on 16.02.2017.

[No. L-12011/47/2014-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 70/2014

Reference No. L-12011/47/2014-IR(B-I) dated: 28.8.2014

The Secretary
Rajasthan Gramin Bank Officers
Organization & Secretary, Gramin
Bank Employees Union,
59, Patel Colony, S.P.Marg, C-Scheme,
Jaipur.

V/s

The Chairman
Baroda Rajasthan Kshetriya Gramin Bank
Head Office, city Plaza, Vaishali Nagar,
Ajmer.

AWARD

17.5.2016

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“क्या प्रबंधन बड़ौदा राजस्थान क्षेत्रीय ग्रामीण बैंक, प्रधान कार्यालय अजमेर के द्वारा राजस्थान ग्रामीण बैंक ऑफिसर्स आर्गेनाइजेशन एवं ग्रामीण बैंक एम्प. यूनियन की उपरोक्त अंकित मांग संख्या 03 एवं मांग संख्या 05 की पालना न किये जाना न्यायोचित एवं न्यायसंगत है? यदि नहीं तो कर्मकार किस अनुतोष को पाने के अधिकारी है?”

2. Pursuant to the receipt of the reference order, registered notices were issued to both the parties as per the order of the tribunal dated 29.9.2014 fixing 1.12.2014 for filing statement of claim. On 1.12.14 Sh. Rajendra Gupta, Advocate filed memo of appearance (Upasthit Patrak) on behalf of applicant & requested orally for time to file statement of claim. None appeared on behalf of opposite party. Presiding Officer was on leave. Acknowledgement relating to service of summon against applicant was received back which is available on record of the file. 23.2.15 was next date fixed for filing statement of claim. On 23.2.15 presiding officer was at Ahmedabad on official duty in relation to additional charge of CGIT, Ahmedabad. Sh. Rajendra Gupta & Sh. S.S.Sharma, learned advocates appeared on behalf of applicant & alleged to file authority on behalf of applicant on next date. Sh. Surendra Singh, advocate filed authority letter on behalf of opposite party. Next date 11.5.15 was fixed for filing authority & statement of claim by applicant.

3. On 11.5.15 neither anyone appeared on behalf of applicant nor statement of claim was filed. Learned representative of the opposite party was present. Adjourning the case by tribunal on its own motion next date 17.8.15

was fixed for filing statement of claim by applicant. On 17.8.15 Sh. Amit Sharma, advocate appeared on behalf of applicant & sh. Satish Pachori, learned advocate appeared on behalf of opposite party. Oral request made from applicant side for filing statement of claim by next date was granted & 9.11.15 was fixed for filing statement of claim. On 9.11.15 none appeared for applicant. Learned representative of the opposite party appeared on their behalf. Again, adjourning the case by tribunal on its own motion next date 11.1.16 was fixed for filing statement of claim. On 11.1.16 none appeared on behalf of applicant & learned representative of opposite party came in appearance. Providing last opportunity to the applicant 4.2.16 was fixed for filing statement of claim. On 4.2.16 till 17.00 hours applicant failed to appear & file statement of claim. Learned representative of the opposite party appeared. Next date 21.3.16 was fixed for filing statement of claim providing further opportunity to the applicant.

4. On 21.3.16 both the parties appeared & orally request was made for time to file statement of claim which was granted & 16.5.16 was next date fixed for filing statement of claim. On 16.5.16 learned representative of applicant who has filed memo of appearance on 1.12.14 alleged that he is not concerned with the case anymore. Learned advocate Sh. Siyaram Chaudhary appeared on behalf of opposite party who alleged that learned representative for opposite party Sh. Surender Singh, advocate will not come in appearance due to sleekness of some elderly person at his home. Other learned representatives Sh. S.S.Sharma was in appearance on 23.2.15 did not appear & file authority & statement of claim on behalf of applicant till 16.5.16. Similarly, Sh. Amit Sharma who was in appearance on 17.8.15 did not appear till 16.5.16 on behalf of applicant with authority & statement of claim. In above circumstances, looking into the fact that in spite of many opportunities to the applicant for filing statement of claim applicant never appeared & filed claim or authority of someone on his behalf to represent the case, hence, further opportunity was closed for filing statement of claim.

5. It is pertinent to note that on 28.8.2014 reference order was sent by Ministry to applicant with direction to file statement of claim within 15 days from the date of receipt of reference. Applicant has neither filed statement of claim on the direction of Ministry nor on notice & knowledge of the proceeding pending before the tribunal. It appears that applicant is not interested & willing in submitting the claim for adjudication. In the circumstances & in the absence of material evidence brought on record, tribunal is unable to record the finding on the issues referred to it on merit. Accordingly, “No Claim Award” is passed in this matter. The reference under adjudication is answered accordingly.

6. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 16 फरवरी, 2017

का.आ. 414.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ बीकानेर एण्ड जयपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 86/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-12012/59/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 16th February, 2017

S.O. 414.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 86/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of State Bank of Bikaner and Jaipur and their workmen, received by the Central Government on 16.02.2017.

[No. L-12012/59/2012-IR (B-I)]

B. S. BISHT, Section Officer

अनुबंध

केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 86 / 2012

भरत पाण्डेय, पीठासीन अधिकारी

रेफरेन्स नं-- L-12012/59/2012- IR (B-I) दिनांक 16/10/2012

Shri Pappuram Prajapat
S/o Shri SONYARAM Prajapat,

R/o Village -Prathvipura,
Sub Tehsil - Malakheda,
Alwar Raj.

v/s

1. The Assistant General Manager,
State Bank of Bikaner and Jaipur,
Opposite - Pursharthi Dharmshala,
Alwar (Rajasthan)

प्रार्थी की तरफ से : श्री जगदीश शर्मा – प्रतिनिधि

अप्रार्थी की तरफ से : श्री अमिताभ मजूमदार – एडवोकेट

: पंचाट :

दिनांक : 30.09.2016

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 10 उपधारा 1 खण्ड (घ) के अन्तर्गत दिनांक 16/10/2012 के आदेष से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णयन हेतु स्थित है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् है :–

2. “Whether the action of the management of State Bank of Bikaner & Jaipur, Alwar in terminating the services of Shri Pappu Ram Prajapat(Gardener) w.e.f. 01.01.2012 is legal and Justified? To what relief the workman is entitled?”

3. स्टेटमेन्ट ऑफ क्लेम में दिये गये तथ्यों के अनुसार संक्षिप्तः प्रार्थी का कथन है कि उसकी नियुक्ति अप्रार्थी नियोजक द्वारा मौखिक आदेश से दिनांक 01.08.2008 को श्रमिक के रूप में अप्रार्थी नियोजक के कार्यालय में की गई थी और प्रार्थी से सफाई का कार्य, चाय आदि लाने का कार्य, पानी पिलाना, डाक देना, कागजों को एक टेबल से दूसरी टेबल पर पहुँचाना, प्लान्ट (पेड-पौधों) में पानी देना आदि का कार्य करवाया जाता रहा है। प्रार्थी को अप्रार्थी नियोजक द्वारा सेवा मुक्ति से पूर्व कन्सोलीडेटेड वेतन एक हजार रुपये प्रतिमाह दिया जाता रहा है। प्रार्थी बैंक खुलने से आधा घण्टे पूर्व आता था और बैंक के बन्द होने के बाद ही घर जाता था इस प्रकार पूरे वक्त बैंक समय में कार्य करता था।

4. याचिका के प्रस्तर दो में कथन है कि प्रार्थी दिनांक 01.08.2008 से 31.12.2011 तक लगातार अप्रार्थी नियोजक के यहां कार्य किया है। दिनांक 01.01.2012 को अप्रार्थी नियोजक ने उसे मौखिक आदेश से डयूटी पर नहीं लेकर सेवा से मुक्त कर दिया और कहा कि अब जब तक एग्रीमेन्ट पर साईन नहीं करोगे तब तक तुम्हें डयूटी पर नहीं लेंगे। वह मुझसे एक ऐसे एग्रीमेन्ट पर साईन कराना चाहते थे जिसका मुझसे कोई सम्बन्ध नहीं था। ऐसे एग्रीमेन्ट पर साईन कराने हेतु विपक्षी लगातार दबाव डाल रहे थे और वैधानिक जिम्मेदारी से बचने के लिए फर्जी पेड़ खरीदने व बेचने और सप्लाई करने के अनुबन्ध पर हस्ताक्षर कराना चाहते थे, जिससे मना करने पर माह नवम्बर 2011 और दिसम्बर 2011 के वेतन का भी भुगतान अप्रार्थी ने नहीं किया और इस बिनाह पर भी वो दबाव डालते रहे। मेरे द्वारा वेतन का भुगतान किये जाने हेतु अभिभाषक से एक नोटिस भी दिलाया गया किन्तु उसके बाद भी अप्रार्थी नियोजक द्वारा वेतन का भुगतान नहीं किया गया।

5. आगे प्रार्थी का कथन है कि प्रार्थी की सेवा मुक्ति के बाद प्रार्थी ने विपक्षी नियोजक के यहां काफी अनुनय विनय की कि उसे डयूटी पर ले लेवे किन्तु प्रार्थी को विपक्षी ने डयूटी पर नहीं लिया। इसके बाद प्रार्थी द्वारा केन्द्रीय श्रम समझौता अधिकारी, जयपुर, राजस्थान के समक्ष एक शिकायत पत्र प्रस्तुत किया गया जिस पर वार्ता आमन्त्रित की गई किन्तु विपक्षी द्वारा नौकरी में लेने से इन्कार करने के कारण वार्ता विफल घोषित की गई और अन्त में सरकार ने प्रार्थी श्रमिक की सेवा मुक्ति का विवाद न्याय निर्णय हेतु श्रीमान के समक्ष प्रस्तुत किया। प्रार्थी अपनी सेवा मुक्ति को निम्न आधार पर अनुचित एवं अवैध मानता है :–

क. यह है कि प्रार्थी की नियुक्ति विपक्षी के नियोजन में बतौर श्रमिक दिनांक 01.08.2008 को हुई थी और प्रार्थी से सफाई का कार्य, चाय आदि लाने का कार्य, पानी पिलाना, डाक देना, कागजों को एक टेबल से दूसरी टेबल पर पहुँचाना, प्लान्ट (पेड-पौधों) में पानी देना आदि का कार्य करवाया जाता रहा है। प्रार्थी को माह अक्टूबर 2011 से ही नियोजक के द्वारा यह दबाव डाला जाता रहा है कि ऐसे अनुबन्ध पर हस्ताक्षर करें कि वो बैंक को पौधे बेचना और सप्लाई करने का कार्य प्रतिमाह करता है। प्रार्थी के इन्कार करने पर प्रार्थी का माह नवम्बर एवं दिसम्बर 2011 का वेतन भी अप्रार्थी नियोजक नहीं किया और अन्त में एक जनवरी 2012 को स्पष्ट रूप से यह कह दिया कि अपने घर जाओ, अगर अनुबन्ध पर हस्ताक्षर नहीं करते हो तो तुम्हारी जरूरत ही नहीं है। प्रार्थी ने दिनांक 01.08.2008 से 31.12.2011 तक लगातार विपक्षी के नियोजन में कार्य किया है इस प्रकार उसने प्रत्येक वर्ष में 240 दिन से कहीं अधिक का कार्यकाल पूरा किया है और प्रार्थी ने प्रत्येक माह में बिना किसी प्रकार की कटौति के पूर्ण वेतन, माह दर माह प्राप्त किया है। विपक्षी नियोजक द्वारा दिनांक 01.01.2012 को जबानी आदेश से बिना कोई एक माह का नोटिस अथवा नोटिस वेतन दिये और बिना छटनी का मुआवजा दिये सेवा से मुक्त कर दिया गया जो अनुचित एवं अवैध है एवं निरस्त होने योग्य है।

ख. आगे कथन है कि प्रार्थी की नियुक्ति विपक्षी के नियोजन में दिनांक 01.08.2008 को हुई थी और उक्त तिथि के बाद कर्मचारी आज भी विपक्षी के यहां कार्यरत है किन्तु प्रार्थी को उससे वरिष्ठ होते हुए भी सेवा मुक्त कर दिया गया है।

ग. प्रार्थी की सेवा मुक्ति दिनांक 01.01.2012 को की गई है और प्रार्थी के स्थान पर श्रवण कुमार सैनी को विपक्षी नियोजक द्वारा नियुक्त किया गया है जिसे प्रार्थी के स्थान पर नियुक्त किया गया है। प्रार्थी जो कार्य करता था उसकी प्रकृति स्थाई है और अब दीगर कर्मचारी से वो कार्य लिया जा रहा है एवं प्रार्थी के स्थान पर उसे दो हजार रुपये प्रतिमाह वेतन दिया जा रहा है।

6. प्रस्तर 4 में कहा गया है कि नियोजक द्वारा प्रार्थी की सेवा मुक्ति औद्योगिक विवाद अधिनियम 1947 की धारा 25 एफ, जी, एवं एच एवं रूल 77-78 के प्रावधानों के विपरीत की गई है, अतः सेवा मुक्ति अनुचित एवं अवैध है।

7. अतः श्रीमान के समक्ष स्टेटमेन्ट ऑफ क्लेम प्रस्तुत कर निवेदन है कि प्रार्थी की सेवा मुक्ति को अनुचित एवं अवैध करार करते हुए विपक्षी नियोजक को यह आदेश प्रदान करें कि वह प्रार्थी को यथावत नौकरी पर ले तथा सेवा मुक्ति से पुनः सेवा में लिये जाने तक का सभी लाभ परिलाभ एवं पिछला सम्पूर्ण वेतन देते हुए लगातर सेवा में मानते हुए यथावत नौकरी पर ले। यह भी अनुरोध है कि वाद खर्चा 2 हजार रुपये विपक्षी संस्थान से दिलाये जाने की आज्ञा प्रदान करें।

8. प्रार्थी ने जवाब दो भागों में प्रस्तुत किया है जिसमें प्रथम भाग में प्रारम्भिक आपत्तियां हैं एवं द्वितीय भाग में क्लेम का प्रस्तरवार जवाब है।

9. प्रस्तरवार जवाब में प्रस्तर एक के कथन को अस्वीकार कर यह कहा गया है कि आवेदक कभी किसी पद पर नियुक्त नहीं किया गया है जैसा कि उसने प्रस्तर एक में कहा है। यह भी कहा गया कि बैंक में नियुक्ति की एक नियत प्रक्रिया है जिसके अनुसार सारी नियुक्तियों की जाती है। यह भी कहा गया है कि याची बैंक के पौधे एवं पौधों के गमले की आपूर्ती हेतु बैंक से सम्बद्ध किया गया था जो पौधों और गमलों की आपूर्ति के अतिरिक्त आपूर्ति किये गये पौधों की रख-रखाव करने तथा पौधों को पानी देने का कार्य करता था जिसमें आधा से एक घण्टे लगते थे तथा याची के इस कार्य हेतु कोई समयावधि नियत नहीं थी न ही प्रार्थी के कार्य का कोई पर्यवेक्षीय नियन्त्रण था। प्रार्थी द्वारा किये गये कार्य के लिए समय-समय पर प्रार्थी द्वारा प्रस्तुत विवाद औद्योगिक विवाद अधिनियम 1947 की धारा 2 (k) के अन्तर्गत परिभाषित “औद्योगिक विवाद” की परिभाषा से आच्छादित नहीं है।

10. याचिका के पैरा 2 व 3 (a) में प्रस्तुत कथन के सम्बन्ध में कहा गया है कि कथन सही नहीं है तथा उसे सिद्ध करने का भार याची पर है। पैरा 3 (b) एवं (c) के सम्बन्ध में कहा गया है कि इन धाराओं में प्रस्तुत कथन को सिद्ध करने का भार याची पर है।

11. अतिरिक्त कथन में पैरा 2 के विरुद्ध यह कहा गया है कि कथन आधारहीन एवं बलहीन है। याची प्रतिमाह अपनी बिल प्रस्तुत करता था और बैंकर्स चेक द्वारा बैंक से भुगतान प्राप्त करता था। धारा 3 (a) के कथन को इन्कार कर आधारहीन बताते हुए यह कहा गया है कि प्रार्थी बैंक द्वारा किसी पद पर नियुक्त नहीं था। आगे यह कहा गया है कि बैंक परिसर में पौधों और गमलों के रख-रखाव हेतु प्रार्थी को सम्बद्ध किया गया था तथा प्रार्थी की सेवा संविदा पर थी। प्रार्थी का कार्य न तो पर्यवेक्षकाधीन था न ही प्रार्थी के कार्य करने के तौर तरीके पर बैंक का कोई नियन्त्रण था। प्रार्थी को भुगतान समय-समय पर उसके द्वारा बिल की प्रस्तुति पर किया जाता था। यह भी कहा गया है कि चूंकि याची बैंक द्वारा नियुक्त नहीं था इसलिए उसकी “छंटनी” अथवा उसकी सेवा समाप्ति का कोई अवसर बैंक के पास नहीं था। धारा 3 (b) एवं (c) के विरुद्ध यह कहा गया है कि बैंक द्वारा प्रार्थी की कोई सेवा समाप्ति नहीं की गयी है जैसाकि प्रार्थी ने कहा है।

12. प्रस्तर 4 के कथन से स्पष्ट इन्कार कर यह कहा गया है कि बैंक द्वारा औद्योगिक विवाद अधिनियम के किसी प्राविधान का उल्लंघन नहीं किया गया है कि जैसा कि प्रार्थी ने कहा है। आगे कथन है कि प्रार्थी के कार्य की प्रकृति तथा उसके निष्पादन तरीके को दृष्टिगत रख प्रार्थी को किसी भी प्रकार यह नहीं कहा जा सकता है कि वह बैंक द्वारा नियुक्त था एवं प्रार्थी तथा बैंक के बीच सेवक-नियोजक का सम्बन्ध अस्तित्व में न रहने के कारण बैंक द्वारा “छंटनी” एवं सेवामुक्ति के लिए कोई अवसर नहीं था। यह भी कहा गया है कि याची किसी अनुतोष को पाने का हकदार नहीं है तथा याचिका पोषणीय नहीं है।

13. प्रारम्भिक आपत्ति में कहा गया है कि प्रार्थी द्वारा उठाया गया विवाद औद्योगिक विवाद अधिनियम की धारा 2 (k) में परिभाषित “औद्योगिक विवाद” को परिभाषा से आच्छादित नहीं है क्योंकि विपक्षी तथा प्रार्थी के बीच नियोजक एवं कर्मकार का रिश्ता नहीं है। यह भी कहा गया है कि “समुचित सरकार” ने मामले को पंचाट हेतु प्रेषित करते समय मस्तिष्क का उचित प्रयोग नहीं किया है। यह भी कहा गया है कि विपक्ष द्वारा “समुचित सरकार” के समक्ष यह बात प्रस्तुत की गयी है कि बैंक द्वारा प्रार्थी को कोई नियुक्ति नहीं दी गयी है एवं प्रार्थी को विपक्ष द्वारा कभी वेतन का भुगतान नहीं किया गया है। प्रार्थी को बैंक द्वारा बैंकर्स चेक से भुगतान उसी द्वारा प्रस्तुत बिल के आधार पर किया जाता था। प्रार्थी धारा 2 (s) में “कर्मकार” की परिभाषा से आच्छादित नहीं है।

14. विपक्ष द्वारा दिनांक 5.6.14 को वादोत्तर की प्रस्तुति के बाद न्यायाधिकरण द्वारा प्रार्थी पक्ष को रिज्वायन्डर एवं दस्तावेज प्रस्तुत करने के लिए अवसर देते हुए 20.8.14 तिथि नियत की गयी। प्रार्थी दिनांक 20.8.14, 29.10.14, 30.12.14, 26.3.14, 8.6.15, 31.8.15, 18.11.15, 6.1.16, 27.1.16, 4.4.16, 30.5.16 और 23.6.16 को रिज्वायन्डर एवं दस्तावेज प्रस्तुत हेतु नियत तिथियों पर न उपस्थित आया और न ही उसकी तरफ से रिज्वायन्डर या दस्तावेज प्रस्तुत हुआ। दिनांक 6.1.16 तथा 30.5.16 को प्रार्थी

को उक्त प्रस्तुति हेतु अन्तिम अवसर भी प्रदान किया गया। दिनांक 23.6.16 को प्रार्थी को आगे अवसर प्रदान करने की कार्यवाही समाप्त की गयी और अगली तिथि दिनांक 11.8.16 को विपक्ष को अपना दस्तावेज प्रस्तुत करने का अवसर प्रदान किया गया।

15. दिनांक 11.8.16 को याची पक्ष तथा विपक्ष अनुपस्थित था अतः विपक्ष को 31.8.16 को दस्तावेज प्रस्तुति हेतु अन्तिम अवसर प्रदान किया गया तथा आदेशोपरान्त विपक्ष के प्रतिनिधि उपस्थित आये जिन्हें उक्त आदेश से अवगत कराया गया। दिनांक 31.8.16 को विपक्ष की तरफ से न दस्तावेज प्रस्तुत हुआ न अवसर की माँग की गयी अतः विपक्ष को दस्तावेज जो साक्ष्य प्रस्तुत करने का अवसर समाप्त कर दिनांक 20.9.16 याची के साक्ष्य के लिए तिथि नियत की गयी।

16. दिनांक 20.9.16 को याची की तरफ से न कोई उपस्थित आया न साक्ष्य प्रस्तुत किया गया। दिनांक 20.8.14 से प्रार्थी की निरन्तर अनुपस्थिति तथा मामले को आगे चलाने में प्रार्थी की अनिच्छा को दृष्टिगत रख प्रार्थी का साक्ष्य 20.9.16 को समाप्त किया गया तथा 28.9.16 विपक्षी के साक्ष्य हेतु तिथि नियत की गयी।

17. दिनांक 28.9.16 को याची पक्ष अनुपस्थित था। विपक्ष के विद्वान प्रतिनिधि उपस्थित आये जिन्होंने बयान किया कि याची पक्ष ने कोई साक्ष्य नहीं प्रस्तुत किया है अतः विपक्ष को साक्ष्य नहीं प्रस्तुत करना है अतः विपक्ष का साक्ष्य समाप्त किया गया।

18. मैंने विपक्ष के विद्वान अधिवक्ता की बहस सुनी। याची पक्ष की तरफ से बहस के लिए न कोई उपस्थित आया न बहस की गयी।

19. विपक्ष के विद्वान प्रतिनिधि ने बहस की है कि याची ने याचिका के कथन के समर्थन में कोई साक्ष्य नहीं प्रस्तुत किया है अतः याचिका खारिज होने योग्य है।

20. न्याय निर्णयन हेतु प्रस्तुत रिफरेन्स में यह कहा गया है कि क्या प्रार्थी श्री पप्पू राम प्रजापत (माली) की स्टेट बैंक ऑफ बिकानेर एण्ड जयपुर, अलवर के प्रबन्धन द्वारा दिनांक 1.1.2012 से की गयी सेवामुक्ति उचित एवं विधिसंगत है? बैंक द्वारा नियुक्ति के तथ्य से इन्कार किया गया है और प्रार्थी तथा बैंक के बीच कर्मकार एवं नियोक्ता के सम्बन्ध से भी इन्कार किया गया है, अतः इस तथ्य को सिद्ध करने का भार याची पर है कि वह सिद्ध करे कि विपक्ष ने उसे नियुक्ति दी, वेतन दी तथा सेवामुक्ति का आदेश दिया। सेवामुक्ति के आदेश को मौखिक कहा गया है परन्तु इस सम्बन्ध में भी साक्ष्य में कोई शपथ-पत्र याची ने नहीं प्रस्तुत किया है। याची ने कोई नियुक्ति पत्र या वेतन भुगतान के सम्बन्ध में अभिलेख या अन्य किसी प्रकार का अभिलेखीय साक्ष्य विपक्षी के यहाँ सेवा के सम्बन्ध में नहीं प्रस्तुत किया है।

21. साक्ष्य में याची ने कोई शपथ पत्र भी नहीं प्रस्तुत किया है। याची की दिनांक 20.8.14 से निरन्तर अनुपस्थिति यह दर्शाती है कि याची इस मामले को आगे चलाने तथा साक्ष्य प्रस्तुति में कोई रुचि नहीं रखता है।

22. उभयपक्ष के अभिवचनों तथा उसके समर्थन में साक्ष्य के अभाव और सम्बन्धित तथ्य एवं परिस्थितियों, के सम्यक अवलोकन एवं विश्लेषण से यह स्पष्ट है कि याची इस तथ्य को सिद्ध करने में असफल है कि स्टेट बैंक ऑफ बिकानेर एण्ड जयपुर, अलवर के प्रबन्धन द्वारा याची की दिनांक 1.1.2012 से सेवामुक्ति की कार्यवाही अनुचित एवं विधि विरुद्ध है। अतः मैं इस निष्कर्ष पर हूँ कि स्टेट बैंक ऑफ बिकानेर एण्ड जयपुर, अलवर के प्रबन्धन याची श्री पप्पू राम प्रजापत (माली) की दिनांक 1.1.2012 से की गयी सेवामुक्ति की कार्यवाही उचित एवं विधिसंगत है। याची याचित अनुतोष पाने का हकदार नहीं है, याची की याचिका तदनुसार खारिज की जाती है। न्यायनिर्णयन हेतु प्रेषित निर्देश का उत्तर उक्त प्रकार दिया जाता है। पंचाट तदनुसार पारित किया जाता है।

भरत पाण्डेय, पीठासीन अधिकारी

नई दिल्ली, 16 फरवरी, 2017

का.आ. 415.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 12/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-41011/99/2014-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 16th February, 2017

S.O. 415.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of Uttar Paschim Railway and their workmen, received by the Central Government on 16.02.2017.

[No. L-41011/99/2014-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 12/2015

Reference No. L-41011/99/2014-IR(B-I) dated: 09.01.2015

Shri P.C. Saini
 The Zonal Karyakarni Adhyaksh
 Uttar Paschim Railway Karmachari Sangh
 8-A, D.A.V Collage Staff Colony,
 Bayawar Road, Ajmer (Rajasthan).

V/s

The Divisional Railway Manager
 North West Railway
 Divisional Office
 Ajmer (Rajasthan).

AWARD

19.2.2016

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

"क्या प्रबंधन मंडल रेल प्रबंधक, उत्तर पश्चिम रेलवे, मंडल कार्यालय, अजमेर द्वारा सीमित विभागीय प्रतियोगिता परीक्षा में सभी विभाग के कर्मचारियों को शामिल नहीं करने की कार्यवाही बैद्यानिक एवं न्याय संगत है, यदि नहीं तो प्रार्थी यूनियन किस राहत की और कब से पाने की हकदार हैं?"

2. Pursuant to the receipt of the reference order, registered notices were issued to the parties as per the order of the tribunal fixing 23.6.2015 for filing statement of claim. On 23.6.2015 registered notice sent to the applicant did not return back & applicant also did not appear. Learned representative of opposite party Railway was present & authority for railway was filed by him. 7.9.2015 was next date fixed for filing statement of claim. On 7.9.2015 none appeared for applicant. Learned representative for opposite party was present. Order was passed to send notice again to the applicant fixing 18.11.2015 for filing statement of claim.

3. On 18.11.2015 none appeared for applicant. Learned representative of opposite party was present. Once more an opportunity was extended to the applicant for filing statement of claim on 29.12.2015. On 29.12.2015 both the parties were absent & order was passed to issue notice to the applicant fixing 1.2.2016 for filing statement of claim. On 1.2.2016 applicant was absent. Acknowledgement with notice sent to the applicant was received back which is available on record. Learned representative of opposite party appeared on 1.2.2016 & strongly objected to the opportunities given to the applicant on many occasions in the past. It was pointed out that applicant is not coming in appearance, hence, opportunity should be closed. Looking into past occurrences on different dates opportunity for filing statement of claim was closed & case was reserved for award.

4. It is pertinent to note that reference order dated 9.1.2015 was sent by Ministry to applicant with direction to file statement of claim within 15 days from the date of receipt of reference. Applicant has neither filed statement of claim on the direction of Ministry nor on notice & knowledge of the proceeding pending before the tribunal. It appears that applicant is not interested & willing in submitting the claim for adjudication. In the circumstances & in the absence of statement of claim & material evidence brought on record, tribunal is unable to record the finding on the reference for adjudication on merit. Accordingly, "No Claim Award" is passed in this matter. The reference under adjudication is answered accordingly.

5. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 16 फरवरी, 2017

का.आ. 416.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बड़ौदा राजस्थान ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार

औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 56/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-12011/34/2014-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 16th February, 2017

S.O. 416.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 56/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of Baroda Rajasthan Gramin Bank and their workmen, received by the Central Government on 16.02.2017.

[No. L-12011/34/2014-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 56/2014

Reference No. L-12011/34/2014-IR(B-I) dated: 23.7.2014

The Secretary
Rajasthan Gramin Bank Officers organization
59, Patel colony, S.P.Marg,
C-Scheme, Jaipur.

V/s

The Chairman
Baroda Rajasthan Gramin Bank
Head Office, Citi Plaza, Vaishali Nagar,
Ajmer (Rajasthan).

AWARD

18.2.2016

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“क्या प्रवंधन बड़ौदा राजस्थान क्षेत्रीय ग्रामीण बैंक, प्रधान कार्यालय अजमेर के द्वारा यूनियन के अध्यक्ष श्री आर. के. दरगड़. का दुर्भावनावश स्थानांतरण किया जाना न्यायोचित एवं न्यायसंगत है ? यदि नहीं तो कर्मकार किस अनुतोष को पाने का अधिकारी है?”

2. Pursuant to the receipt of the reference order, registered notices were issued to the parties as per the order of the tribunal fixing 29.9.2014 for filing statement of claim. On 29.9.2014 Sh. Pankaj Tripathi, Secretary to the applicant union was present in person who requested for time to file statement of claim. Learned representative for opposite party was present & authority on behalf of opposite party was filed by him. Next date 17.11.2014 was fixed for filing statement of claim. On 17.11.2014 presiding officer was on leave. Authority for applicant was filed by Sh. Shyamsunder Sharma & it was requested that further time may be given for filing statement of claim. Opposite party was present. 6.1.2015 was next date fixed for filing statement of claim.

3. On 6.1.2015 both the parties were present. Applicant did not file statement of claim. Further time was requested for filing the claim. 1.6.2015 was next date fixed for filing statement of claim. On 1.6.2015 both the parties were present but statement of claim was not filed. In the interest of justice case was adjourned & 10.8.2015 was next date fixed for filing statement of claim by applicant. On 10.8.2015 both the parties were present & further time for filing statement of claim was requested. 19.10.2015 was next date fixed for filing statement of claim.

4. On 19.10.2015 applicant was absent & opposite party was present. Case was adjourned by the tribunal on its own motion fixing 21.12.2015 for filing statement of claim by applicant. On 21.12.2015 applicant was absent. Learned representative for opposite party was present. Statement of claim was not filed. In the interest of justice further one more opportunity was extended to the applicant by tribunal on its own motion fixing 1.2.2016 for filing statement of claim. On 1.2.2016 both the parties were absent in the forenoon hours of the day hence, case was deferred for hearing

in the afternoon. In the afternoon Sh. Pankaj Tripathi, Secretary to the applicant union was personally present & learned representative for opposite party was present on behalf of opposite party who opposed any further opportunity to the applicant for filing statement of claim in view of numerous opportunity given in past. It was stated by Sh. Pankaj Tripathi, Secretary that there is no necessity to continue with further proceeding in the case. Accordingly, further proceeding for filing statement of claim was closed & case was reserved for award.

5. It is pertinent to note that reference order dated 23.7.2014 was sent by Ministry to applicant with direction to file statement of claim within 15 days from the date of receipt of reference. Applicant neither filed statement of claim on the direction of Ministry nor on notice & knowledge of the proceeding pending before the tribunal. Further, applicant himself alleged on 1.2.2016 that there is no need to proceed further with the case. It appears that applicant is not interested & willing in submitting the claim for adjudication. In the circumstances & in the absence of statement of claim & material evidence brought on record, tribunal is unable to record the finding on the reference sent to the tribunal for adjudication on merit. Accordingly, "No Claim Award" is passed in this matter. The reference under adjudication is answered accordingly.

6. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 16 फरवरी, 2017

का.आ. 417.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बड़ौदा राजस्थान ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 55/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-12011/35/2014-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 16th February, 2017

S.O. 417.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 55/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of Baroda Rajasthan Gramin Bank and their workmen, received by the Central Government on 16.02.2017.

[No. L-12011/35/2014-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 55/2014

Reference No. L-12011/34/2014-IR(B-I) dated: 23.7.2014

The Secretary
Rajasthan Gramin Bank Officers Organization
59, Patel colony, S.P.Marg,
C-Scheme, Jaipur.

V/s

The Chairman
Baroda Rajasthan Gramin Bank
Head Office, Citi Plaza, Vaishali Nagar,
Ajmer (Rajasthan).

AWARD

18.2.2016

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“क्या प्रबंधन बड़ौदा राजस्थान क्षेत्रीय ग्रामीण बैंक, प्रधान कार्यालय अजमेर के द्वारा यूनियन के संयुक्त सचिव श्री आर. के. भट्ट एवं यूनियन के सचिव श्री आर. सी. गुप्ता का दुर्भावनावाप्त स्थानांतरण किया जाना न्यायालय एवं न्यायसंगत है ? यदि नहीं तो दोनों कर्मकार किस अनुतोष को पाने के अधिकारी हैं?”

2. Pursuant to the receipt of the reference order, registered notices were issued to the parties as per the order of the tribunal fixing 29.9.2014 for filing statement of claim. On 29.9.2014 Sh. Pankaj Tripathi, Secretary to the applicant union was present in person who requested for time to file statement of claim. Learned representative for opposite party was present & authority on behalf of opposite party was filed by him. Next date 17.11.2014 was fixed for filing statement of claim. On 17.11.2014 presiding officer was on leave. Authority for applicant was filed by Sh. Shyamsunder Sharma & it was requested that further time may be given for filing statement of claim. Opposite party was present. 6.1.2015 was next date fixed for filing statement of claim.

3. On 6.1.2015 both the parties were present. Applicant did not file statement of claim. Further time was requested for filing the claim. 1.6.2015 was next date fixed for filing statement of claim. On 1.6.2015 both the parties were present but statement of claim was not filed. In the interest of justice case was adjourned & 10.8.2015 was next date fixed for filing statement of claim by applicant. On 10.8.2015 both the parties were present & further time for filing statement of claim was requested. 19.10.2015 was next date fixed for filing statement of claim.

4. On 19.10.2015 applicant was absent & opposite party was present. Case was adjourned by the tribunal on its own motion fixing 21.12.2015 for filing statement of claim by applicant. On 21.12.2015 applicant was absent. Learned representative for opposite party was present. Statement of claim was not filed. In the interest of justice further one more opportunity was extended to the applicant by tribunal on its own motion fixing 1.2.2016 for filing statement of claim. On 1.2.2016 both the parties were absent in the forenoon hours of the day hence, case was deferred for hearing in the afternoon. In the afternoon Sh. Pankaj Tripathi, Secretary to the applicant union was personally present & learned representative for opposite party was present on behalf of opposite party who opposed any further opportunity to the applicant for filing statement of claim in view of numerous opportunity given in past. It was stated by Sh. Pankaj Tripathi, Secretary that there is no necessity to continue with further proceeding in the case. Accordingly, further proceeding for filing statement of claim was closed & case was reserved for award.

5. It is pertinent to note that reference order dated 23.7.2014 was sent by Ministry to applicant with direction to file statement of claim within 15 days from the date of receipt of reference. Applicant neither filed statement of claim on the direction of Ministry nor on notice & knowledge of the proceeding pending before the tribunal. Further, applicant himself alleged on 1.2.2016 that there is no need to proceed further with the case. It appears that applicant is not interested & willing in submitting the claim for adjudication. In the circumstances & in the absence of statement of claim & material evidence brought on record, tribunal is unable to record the finding on the reference sent to the tribunal for adjudication on merit. Accordingly, “No Claim Award” is passed in this matter. The reference under adjudication is answered accordingly.

6. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 16 फरवरी, 2017

का.आ. 418.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ सं. 6/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-39025/01/2010-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th February, 2017

S.O. 418.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 6/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 16.02.2017.

[No. L-39025/01/2010-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 6/2015

Shri Manohar Lal, S/o late Shri Bhagwan Swaroop
 R/o 458-B/4B, Ward No.3, Mahrauli,
 New Delhi 110 030

...Workman

Versus

The Chief Manager:HRD,
 Punjab National Bank,
 Circle Office, 3rd Floor, South Delhi
 Rajendra Bhawn, Rajendra Place,
 New Delhi

...Management

AWARD

This case was filed by the claimant directly under Section 2-A of the Industrial Disputes Act, 1947(in short the Act) with the averments that the claimant joined Punjab National Bank (in short the management) on 01.03.1982 as Peon at Nehru Place branch of the management and was discharging his duties sincerely, properly and honestly till 03.08.2013. His services were wrongly terminated by the management with effect from 03.08.2013 without any proper notice and reason.

2. It is alleged that prior to the dismissal of the claimant from service, the management had obtained his signatures and fingerprints on various blank papers, vouchers and slips so as to use the documents against the claimant. All these documents were taken forcefully. Claimant has an unblemished and meritorious record of service to his credit. His last drawn wages was Rs.37,372.00 per month. Though the claimant initially joined the management as a peon, the management took all kinds of manual work from him, like maintaining of the files, delivery of the post of the management, purchasing on behalf of the management, bringing slips from the bank, maintaining the office etc. The workman was also solving electric problems of the management.

3. It is the case of the claimant that action of the management in dismissing him from service is totally illegal and unjustified as well as in violation of Article 14, 16 and 21 of the Constitution of India as well as provisions of Section 25 F, G and H of the Act. Action of the management is alleged to be in violation of principles of natural justice and it amounts to unfair labour practice.

4. All the allegations leveled against the workman in the charge sheet dated 05.02.2013 are wrong and unjustified. Workman has given clarification of the same and told the management that deposits in his account was on account of money which he had borrowed from his daughter. After termination of the job, claimant has not been re-employed and is still unemployed. Claimant has claimed himself to be quite innocent.

5. Lastly, demand notice was served on the management by speed post on 02.06.2014 and thereafter matter was considered by the Assistant Labour Commissioner, which also resulted in failure. Finally, prayer has been made for setting aside order of dismissal passed by the management with all consequential benefits.

6. Management was put to notice and has filed reply to the statement of claim wherein certain preliminary objections have been taken by the management. It is alleged that vide order dated 03.08.2013, punishment of dismissal was awarded to the claimant for gross misconduct under Clause 19.6 of the Bipartite Settlement dated 10.04.2002, which has been signed in terms of provisions of Section 18 of the Act. It is admitted that claimant was working In PNB. However, a complaint was lodged by PNB Circle Office in connection with fraudulent withdrawal of Rs.9.27 crore from the account of THDC(India) Ltd. There were abnormal transactions detected in the account of the claimant and his family member's account as reported by the Investigating Official, as a result of which disciplinary action was initiated vide charge sheet dated 05.02.2013. After holding a detailed entry, claimant was found to be guilty of gross misconduct. The Enquiry Officer vide report dated 12.06.2013 has found the claimant to be guilty of the charges leveled against the claimant, as a result of which punishment of dismissal was passed against him by the Disciplinary authority. The above punishment is in accordance with law and management has afforded full opportunity to the claimant during the course of domestic enquiry.

7. Rejoinder was filed by the claimant to the written statement filed by the management wherein allegations contained in the statement of claim were reasserted and those of the written statement were denied.

8. Against this factual background, this Tribunal vide order dated 13.07.2015 framed the following issues:

(i) Whether the termination/dismissal order dated 03.08.2013 is illegal and void?

(ii) Relief

9. Claimant, in order to prove the case against the management, examined himself as WW1 and tendered in evidence his affidavit Ex.WW1/A and also tendered documents Ex.WW1/1 to Ex.W1/12. Management in order to rebut the case of the claimant, examined Shri D.P. Chauhan, Senior Manager, as MW1 and his affidavit is Ex.MW/A. He also tendered in evidence, documents Ex.MW1/1 to Ex.MW1/8.

10. I have heard Shri S.K.Ojha, A/R for the claimant and Shri RajatArora, A/R for the management.

11. It is clear from pleadings of the parties, Shri Manohar Lal had joined as peon with the management on 01.03.1982. Admittedly, he was dismissed from service on the basis of enquiry proceedings Ex.MW1/1 by the Chief Manager:HRD vide order dated 03.08.2013. Enquiry report is Ex. MW1/8.

12. It was strongly urged on behalf of the claimant that the claimant has not committed any offence or wrong nor he was involved in any criminal case. Therefore, enquiry conducted against the workmen is an exercise in futility. Allegations mentioned in the charge sheet dated 05.02.2013 did not constitute any misconduct under the law. As such, there was no question of awarding punishment dismissal upon the claimant, who has meritorious record of service to his credit. Learned A/R for the claimant further proceeded to argue that in fact the claimant had borrowed money from his daughter, who appeared as a witness in the domestic enquiry as he was in need of the amount in question, which is not in violation of any banking norms nor it amounts to any offence under the law. Act of the workmen, in the contention of the learned A/R for the workman, cannot be considered to be a misconduct at all.

13. Per contra, Shri Rajat Arora appearing on behalf of the management strongly defended the contentions contained in the Enquiry Report Ex.MW1/8 and further urged that punishment of dismissal awarded to the claimant is perfectly in consonance with provisions of Bipartite Settlement, which prescribes various punishments when a delinquent employee is found to be guilty under the law. It was further contended that there were deposits in the account of the claimant and his wife to the tune of Rs.---, which have not been satisfactorily explained by the claimant. Moreover, it was not proved by the claimant as to when the amount in question was borrowed from his daughter or son in law. Moreover, claimant has not examined his daughter before this Court and the plea of borrowing of the amount is an afterthought so as to justify the illegal deposits in the account of the claimant.

14. Before I proceed to consider the comparative merits of the above statement, it is necessary to bear in mind meaning of the expression 'misconduct' which is frequently used in such like service matters and as per Bipartite Settlement dated 10.04.2002 in Clause V and the same has been defined as under:

5. By the expression "gross misconduct" shall be meant any of the following acts and omissions on the part of an employee:

- (a) engaging in any trade or business outside the scope of his duties except with the written permission of the bank;
- (b) unauthorized disclosure of information regarding the affairs of the bank or any of its customers or any other person connected with the business of the bank which is confidential or the disclosure of which is likely to be prejudicial to the interests of the bank;
- (c) drunkenness or riotous or disorderly or indecent behavior on the premises of the bank;
- (d) willful damage or attempt to cause damage to the property of the bank or any of its customers;
- (e) willful insubordination or disobedience of any lawful and reasonable order of the management or of a superior;
- (f) habitual doing of any act which amounts to "minor misconduct" as defined below:- habitual meaning a course of action taken or persisted in, notwithstanding that at least on three previous occasions censure or warnings have been administered or an adverse remark has been entered against him;
- (g) willful slowing down in performance of work;
- (h) gambling or betting on the premises of the bank
- (i) speculation in stocks, shares, securities or any commodity whether on his account or that of any other persons;
- (j) doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss;
- (k) giving or taking a bribe or illegal gratification from a customer or an employee of the bank;

- (l) abetment or instigation of any of the acts or omissions above mentioned.
- (m) Knowingly making a false statement in any document pertaining to or in connection with his employment in the bank.
- (n) Resorting to unfair practice of any nature whatsoever in any examination conducted by the Indian Institute of Bankers or by or on behalf of the bank and where the employee is caught in the act of resorting to such unfair practice and a report to that effect has been received by the bank from the concerned authority.
- (o) Resorting to unfair practice of any nature whatsoever in any examination conducted by the Indian Institute of Bankers or by or on behalf of the bank in cases not covered by the above Sub Clause (n) and where a report to that effect has been received by the bank from the concerned authority and the employee does not accept the charge.
- (p) Remaining unauthorisedly absent without intimation continuously for a period exceeding 30 days.
- (q) Misbehaviour towards customers arising out of bank's business.
- (r) Contesting election for parliament / legislative assembly / legislative council / local bodies / municipal corporation / panchayat, without explicit written permission of the bank.
- (s) Conviction by a criminal Court of Law for an offence involving moral turpitude.
- (t) indulging in any act of 'sexual harassment' of any woman at her work place.

15. Expression 'misconduct' has also been subject matter of interpretation before the courts and the Hon'ble Apex Court in the latest Judgement Ravi Yashwant Bhoir vs District Collector (2012) 4 SCC 407, had an occasion to discuss the meaning of the expression 'misconduct' in the context of disciplinary matters/disciplinary proceedings normally initiated by the employer against its employee, as under:.

"A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, wilful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement offense, but not negligence or carelessness."

Misconduct in office has been defined as:

"Any unlawful behavior by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

16. After taking into account ratio of the law , in MM Malhotra vs. Union of India (AIR 2006 SC 80), it was held as under:

It has, therefore, to be noted that the word "misconduct" is not capable of precise definition. But at the same time though incapable of precise definition, the word "misconduct" on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the statute and the public purpose it seeks to serve.

17. It is also well settled position in law that expression 'misconduct' is to be appreciated in terms of the nature of the allegations leveled against the delinquent employee i.e. such allegations are detrimental to the public interest. Since the expression 'misconduct' has already been explained in Clause V(supra) of the Bipartite Settlement dated 10.04.2002, there is hardly any need to refer to any other text or authority so as to determine whether the claimant is guilty of misconduct or not.

18. During the course of arguments, it was fairly admitted by the learned A/R for the claimant also that the following accounts were maintained by the claimant, either in his individual capacity or jointly with his family members:

S.No.	Account number	Name of Account Holder
1	3078009400006002	Shri Manohar Lal
2	1546000202109422	Rahul Samniya & Manohar Lal
3	1546000102130706	Mrs. Sudesh
4	307800JB00000068	Rahul Samniya & Manohar Lal
5	1546009900000114	Manohar Lal

A. On scrutiny of account No. 3078009400006002 in your name, it is observed that following four entries of deposits of cash amounting to Rs.3,15,000.00 during 12.01.2012 to 23.01.2012 are abnormal with no justifiable source. Out of the amount so credited, you transferred a sum of Rs.129521.00 on 01.03.2012 to adjust the education loan No.307800JB00000068 in the joint name of your son and you:

S.No.	Date	Particulars	Amount (Rs.)
1.	12.01.2012	By Cash	90,000.00
2.	12.01.2012	By Cash	90,000.00
3.	19.01.2012	By Cash	45,000.00
4.	23.01.2012	By Cash	90,000.00

B. In account No. 546000102130706 of Mrs. Sudesh, W/o Shri Manohar Lal, there are three entries of cash deposits amounting to Rs.2,45,000.00 during 19.01.2012 to 03.02.2012 with no justifiable source as Mrs. Sudesh is a housewife:

S.No.	Date	Particulars	Amount (Rs.)
1.	19.01.2012	By Cash	49,000.00
2.	23.01.2012	By Cash	1,00,000.00
3.	03.02.2012	By Cash	96,000.00

C. In account No.1546009900000114 of Shri Manohar Lal, there are two entries of cash deposit amounting to Rs.64,926.00 dated 04.01.2012 with no justifiable source:

S.No.	Date	Particulars	Amount (Rs.)
1.	04.01.2012	By Cash	30,000.00
2.	04.01.2012	By Cash	34,946.00

The aforesaid credit of cash transactions in your accounts are beyond/not related to the known sources of your income, which tantamount to 'Gross Misconduct' in terms of clause 5(j) of the provisions of Bipartite Settlement dated 10.04.2002 which reads as under:

'Doing any act prejudicial to the interest of the Bank.'

19. During the course of scrutiny by the bank, it was observed that credits on the basis of deposits was to the tune of Rs.3,15,000.00 during the period 12.01.2012 to 23.01.2012 are abnormal with no justifiable source. Admittedly, this is not on account of receipt of salary by the claimant herein nor any cheque or deposit was received in the name of the claimant from any known source. Out of the amounts so credited/transferred, the claimant has adjusted the amount of Rs.1,29,521.00 on 01.03.2012 towards education loan No. 307800JB00000068 in the joint name of his son. It was the case of the management that the above transactions in the accounts of the claimant and his family members are not related to known source of his income, which tantamounts to gross misconduct. This Tribunal cannot ignore the fact that employees of banks are holding position of faith and trust and any unjustified deposits of any amount in the name of officials of banks can really tarnish the image of the bank and other members in case such like transactions are allowed to happen in future. Therefore, there is no merit in the contention of the claimant that act of unexplained deposits in the account of the claimant or the family member do not amount to misconduct in the eyes of law. Certainly, such action on the part of any official of the bank is prejudicial to the interest and working of the bank and can create unfavourable and adverse impression in the minds of the co-employees or public at large. During the course of arguments, learned A/R for the management fairly admitted that criminal case which was registered against THDC Ltd. did not result in filing of any charge sheet against the claimant, though he was arrested by CBI apprehending his involvement in the above case.

20. It is also necessary to mention here that the claimant, while appearing as WW1 has admitted that he has participated in the departmental enquiry and Mr. J.K. Malik was his defence representative. He has received copy of all the documents on 08.03.2013. He has also filed documents during the course of departmental enquiry before the Enquiry Officer. He further admitted that on 05.04.2013, he was given opportunity to inspect the documents and to bring his defence. He again admitted that he was accorded due opportunity during the course of departmental enquiry by the Enquiry Officer. He went to state that he had taken an amount of Rs.5 lakh from his daughter and Rs.1.5 lakh from his son. As per his cross-examination, his son was Assistant Manager during the relevant time and was drawing salary of Rs.20,000.00 per month. He had taken the amount from his daughter in instalments. Enquiry officer has considered the statement of the witnesses examined by the claimant as well as evidence adduced by the management during the course of domestic enquiry and in his final report, Ex.MW1/8, he has found that the claimant was not in a position to explain deposit of such huge amounts in his account as mentioned above. There is no mention of any date or month when the amount in question was taken by the claimant from his daughter or son in law. Claimant has neither examined his son in law nor his daughter before the Tribunal so as to prove the plea of taking loan by him from them from time to time. The Enquiry Officer, in his report, has clearly concluded that the claimant has neither deposited money in his account on the dates of receipt of the above amount alleged to be borrowed from his daughter nor he had purchased items for the marriage of his son. In fact there is no link between the dates of cash received from 12.01.2012 to 03.02.2012 from his daughter and dates of cash deposits in his account in the months of January and February 2012 as Rs.1 lakh was taken from his daughter on 20.02.2012. In the contention of the Enquiry Officer, it cannot be part of the amount of Rs.6.24 lakh deposited in the month of January 2012. Moreover, daughter of the claimant has withdrawn small amounts through ATM to meet her household expenses. In normal circumstances, such huge amounts was not to be kept at home as the same amount in normal circumstances would have been deposited by her in her account with some bank. Admittedly, there were no withdrawals of any such amount so as to correspond with the amount deposited in the account of the claimant. Enquiry Officer has also held that it is highly unbelievable that only Rs.1.5 lakh would be sufficient to meet household expenses of a family for a period of 2 years. Further, the defence witnesses are related to the claimant, being daughter and son in law of the claimant. Neither of them has been examined during the inquiry before this Tribunal.

21. Thus, it is clear from the detailed Enquiry Report Ex.MW1/8 that the Enquiry officer in his report has come to the conclusion that the claimant has not explained the source of deposits of the above amounts. Shri D.P Chauhan was Senior Manager of the management at the relevant time and his affidavit is Ex.MW1/A, which is in consonance with the stand taken by the management in its reply. Disciplinary Authority, agreeing with the findings of the enquiry Officer, imposed punishment of dismissal.

22. It is thus clear from evidence adduced before this Court as well as during the course of domestic enquiry that fair opportunity was granted to the claimant to explain the circumstances vide which huge cash was deposited in the following accounts:

S.No.	Account number	Name of Account Holder
1	3078009400006002	Shri Manohar Lal
2	1546000202109422	Rahul Samniya & Manohar Lal
3	1546000102130706	Mrs. Sudesh
4	307800JB00000068	Rahul Samniya & Manohar Lal
5	1546009900000114	Manohar Lal

23. Therefore, so far as the findings rendered by the Enquiry Officer holding the claimant guilty is concerned, the same is perfectly in consonance with principles of natural justice and does not call for any indulgence. In view of this, issue No.1 is decided in favour of the management and against the claimant.

24. It was urged on behalf of the claimant that the quantum of punishment of 'dismissal' awarded to the claimant is very grave and severe in nature inasmuch as no criminal case was ever filed against the claimant herein. Moreover, nobody has ever made in the contention of the claimant regarding the deposit of the above amount in the account of the claimant and his family members. Therefore, it was urged that this court should take a rational and holistic view of the matter and give lesser punishment.

25. Shri Rajat Arora, appearing on behalf of the management urged that punishment of 'dismissal' is perfectly in accordance with law and commensurate to the misconduct committed by the claimant as he has committed grave misconduct by making deposits in his accounts/accounts of family members from unknown sources. Therefore,

punishment of dismissal awarded by the Disciplinary Authority, in the submission of the learned A/R for the management, should not be reduced any more.

26. After hearing the authorized representatives for the respective parties and careful appraisal of the entire spectrum of evidence on record, this Tribunal is of the considered opinion that punishment of dismissal is the highest form of punishment and the same is really very grave in nature. Admittedly, there is nothing on record to suggest that prior to this case no enquiry whatsoever for any kind of misconduct was ever instituted against the claimant nor there is anything on record to show that in the past the claimant has acted in any manner prejudicial to the interest of the bank.

27. This Tribunal cannot ignore the fact that the CBI has not arrayed the name of the claimant as an accused in the criminal case when charge sheet was filed against the co-accused. In such circumstances, this Tribunal is of the opinion that some lesser punishment is required to be imposed so as to make it proportionate to the gravity of misconduct committed by the claimant. As per Clause 19.5(j), an employee found guilty of gross misconduct may :

- (a) be dismissed without notice; or
- (b) be removed from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or
- (c) be compulsorily retired with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or
- (d) be discharged from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or
- (e) be brought down to lower stage in the scale of pay up to a maximum of two stages', or
- (f) have his increment/s stopped with or without cumulative effect; or
- (g) have his special pay withdrawn; or
- (h) be warned or censured, or have an adverse remark entered against him; or
- (i) be fined.

28. Having overall regard to the facts and circumstances of the case, this Tribunal is of the opinion that punishment of 'dismissal' is very grave and serious in nature and the claimant herein deserves a lesser punishment. Accordingly, punishment of dismissal, as awarded by the Disciplinary Authority vide order 03.08.2013 is hereby set aside and in lieu of which, punishment of 'Compulsory Retirement' is hereby imposed. However, Shri Manohar Lal, the claimant, would be entitled to all the retiral benefits. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : February 1, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 16 फरवरी, 2017

का.आ. 419.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 49/06) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-12012/29/2006-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th February, 2017

S.O. 419.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 49/06) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 16.02.2017.

[No. L-12012/29/2006-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

NO. CGIT/LC/R/49/06

Shri Sunil Yadav,
Late Shri Krishnadevji Yadav, 159/2,
New Panchsheel Colony,
Musakhadi,
Indore

...Workman

Versus

Assistant General Manager,
Bank of Baroda, Central office,
Plot No.202, Ganga Jamuna Complex,
Maharanapratap, Zone-I,
Bhopal (MP)

...Management

AWARD

Passed on this 16th day of January, 2017

1. As per letter dated 25-8-06 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/29/2006-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Bank of Baroda, Regional Office, Bhopal, MP in terminating the services of Shri Sunil Yadav S/o Shri Krishnadev Yadav, Ex Peon cum Driver w.e.f. 6-1-04 is legal and justified? If no, to what relief the workman concerned is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/5. Case of Ist party workman is that he was appointed as peon/ driver on 28-0-03 on pay scale Rs.2750 and allowances. He was allowed to join service till 15-11-03 . He was appointed in 2nd party on probation for six months. His name was sponsored through Employment Exchange, Indore. On 8-8-03, he was interviewed on old Parasia branch. After verifying documents, appointment was given to him. He submitted documents of school leaving certificate, driving license, domicile certificate, caste certificate, character certificate etc. he had produced certificate of passing 8th standard. His probation as extended vide letter dated 6-11-04. On 1-11-04, 2nd party alleged that he had concealed his educational qualification and terminated his services. Chargesheet was issued to him on 13-4-04 along with the documents. Shri K.K.Ajmera was appointed as Enquiry Officer. Workman submitted his defence. Enquiry Officer submitted his findings on 12-7-04. Copy of the findings of Enquiry Officer were sent to him on 29-7-04. His explanation was called within 7 days. Ist party workman had submitted his explanation to the findings of Enquiry Officer. However without considering his explanation, the order of termination as passed on 1-11-04. Ist party workman also submits that his probation period was again extended from 6-11-04. He has reiterated that enquiry was conducted in violation of principles of natural justice. Termination of his service is illegal. His services are terminated in violation of Section 25-f of ID Act. That he worked more than 240 days. There was no condition in appointment order for terminating his services. He was appointed against sanctioned post. Termination of his service on findings of Enquiry Officer is illegal. That he fulfills educational qualifications for appointment. He belongs to backward class. On such ground, workman prays for reinstatement with backwages.

3. 2nd party filed Written Statement opposing claim of workman. 2nd party submits that appointment in Bank are done accordingly to recruitment policy and guidelines. The recruitment of subordinate staff is made as per circular dated 18-10-91. As per said circular, his eligibility criteria is 7th standard pass but not studied beyond 9th standard. Management had called candidates from Employment Exchange, the interview was held on 8-8-04. Workman had appeared in interview. Ist party declared his educational qualification 8th standard pass in the biodata during course of interview, he informed panel that his qualification was 8th standard pass. Workman was selected after interview. Office of appointment was issued on 28-10-03. Appointment of Ist party was on probation. After joining service, Ist party submitted documents that he was studying in 10th standard, considering the declaration submitted by workman, enquiry proceeding was initiated against him. Probation of workman was extended from 7-5-04 to 6-8-04. Workman did not show improvement. His probation was again extended from 7-8-04 to 6-11-04. That workman had given false information regarding his educational qualification therefore chargesheet was issued to him on 7-4-04. On the same day, Bank decided to hold enquiry against workman. Shri K.K.Ajmera was appointed as Enquiry Officer, Vinay appointed as Presenting Officer. Enquiry was held on 7-5-04. Workman alongwith his defence assistant participated in

enquiry. Management filed two documents which were taken on record. Workman submitted application for engaging Shri R.N.Chakravorty as his defence council. Notes of argument were submitted on 13-5-04. It is reiterated that enquiry was conducted allowing opportunity for defence of the workman. Principles of natural justice were followed. After Enquiry Officer submitted findings that charges are proved against workman, showcause notice was issued. Reply given by workman was found unsatisfactory. For proved charges against workman, his services were terminated. Probation of workman was extended twice. Workman had given false information about his educational qualification. For proved charges, his services are terminated. Workman not completed 240 days continuous service. His services are not terminated in violation of Section 25-F of ID Act. All adverse contentions of Ist party workman are denied. 2nd party prays that reference be answered in its favour.

4. As per order dated 23-7-2015, enquiry conducted against workman is found proper and legal.

5. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	Alleged act by workman is not misconduct.
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order

REASONS

6. Point No.1: Enquiry conducted against workman is found legal and proper as per order dated 23-7-2015, question remains for consideration whether misconduct alleged against workman are proved from evidence in Enquiry Proceedings. Exhibit W-6 is chargesheet issued to workman pertains to Ist party workman had claimed his educational qualification as 8th standard. He had submitted documents of School transfer certificate etc disclosed that he had failed in 10th standard. The qualification required were minimum 7th standard but 9th standard failed. Workman had deliberately suppressed his educational qualification. Chargesheet does not refer to any bipartite agreement, rule under which the act committed by Ist party workman is a misconduct. The appointment letter Exhibit W-1 shows Ist party workman was appointed as peon cum driver in pay scale Rs.2750 + allowances. He was appointed on probation for six months. His probation could be extended. Exhibit W-2 Clause 25(8) provides minimum qualification for drivers, watchman, sweeper was 7th standard relaxed with upper limit should not have passed 9th standard. By Exhibit W-3,4, the probation of workman was extended twice. Exhibit W-5 is order of appointment of Enquiry Officer and Presenting Officer. In reply Exhibit W-7 by Ist party workman, he claimed that he had not deliberately concealed his educational qualification. That in Employment Exchange, his qualification was recorded 8th standard. As he had not passed 10th standard, he not reported it to the Employment Exchange office. In his explanation, Exhibit W-9, workman contented that his educational qualification was recorded in Employment Exchange office. Exhibit W-10 is notice, W-11 is application submitted by workman to ALC claiming that he had not concealed his educational qualifications. Identical documents are produced by management at Exhibit M-1 to M-5. M-6 is order of appointing Enquiry Officer in Enquiry Proceeding. Exhibit M-8 workman claimed that he had not deliberately concealed his educational qualifications. The documents in enquiry Exhibit ME-7,8,1 shows workman shown his educational qualification 8th pass. In Exhibit ME-11, he has shown educational qualification 10th failed. The documents regarding passing 9th standard is produced in the enquiry. In ME-9 Enquiry Officer recorded his finding that workman deliberately concealed his educational qualification. However in Exhibit M-9- order of termination, absolutely there is no reference of the findings of Enquiry Officer. The services of workman are terminated observing that he did not fulfill educational qualifications criteria fixed by Bank. His appointment in Bank's service itself is void ab initio. As such, it is clear that the services of Ist party workman were not terminated on the basis of findings of Enquiry Officer.

7. Shri A.K.Shashi counsel for management relies on ratio held in case between

State of Tamil Nadu versus ThiruK.V.Perumal and others reported in 1996(5)SCC-474. Their Lordship dealing with scope of judicial review, question as to whether the charges were established on the material available held beyond the scope of judicial review as the Administrative Tribunal is not an appellate authority over the departmental authorities. The ratio was held w.r.t. Section 4,15 of the Administrative Tribunals Act. The powers of Industrial Tribunal under Section 11-A are wide and therefore ratio cannot be applied to case at hand.

8. Bank has not produced rules or bipartite agreements prescribing higher qualification as misconduct. On perusal of all the documents, no rule is brought to my notice that workman holding higher educational qualification passing 9th standard amounts to misconduct. The probation of Ist party workman was extended twice then chargesheet was issued to him. The chargesheet does not disclose rule how higher qualification is a misconduct. Evidence on record shows name of workman was sponsored through Employment Exchange whereas educational qualification recorded was 8th standard. After getting appointment on probation, if workman would have knowledge about required qualification, certainly he would not have submitted documents regarding higher qualifications. As rule do not prescribed higher qualification as misconduct, the charges alleged against workman cannot be said misconduct. For above reasons, I record my finding in Point No.1 that act alleged against workman is not misconduct.

9. Point No.2- In view of my finding in Point No.1 act committed by workman cannot be said misconduct as such not proved, punishment of dismissal imposed against workman is illegal. For above reasons, I record my finding in Point No.2 in Negative.

10. Point No.3- In view of my finding in Point No.1,2 punishment of dismissal against workman is illegal, question remains whether workman is entitled for reinstatement with backwages.

11. Learned counsel for Ist party Miss R.Nair submitted that workman is in need of the employment, the relief of reinstatement be allowed. Workman is not claiming backwages. Considering above submissions, relief of reinstatement of workman without backwages deserves to be allowed. Accordingly I record my finding in Point No.3.

12. In the result, award is passed as under:-

- (1) The action of the management of Bank of Baroda, Regional Office, Bhopal, MP in terminating the services of Shri Sunil Yadav S/o Shri Krishnadev Yadav, Ex Peon cum Driver w.e.f. 6-1-04 is not legal.
- (2) 2nd party is directed to reinstate workman with continuity of service but without backwages.

R. B. PATLE, Presiding Officer

नई दिल्ली, 16 फरवरी, 2017

का.आ. 420.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 27/12) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-12011/23/2011-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th February, 2017

S.O. 420.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/12) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Bank of India, Zonal Office and their workmen, received by the Central Government on 16.02.2017.

[No. L-12011/23/2011-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/27/12

General Secretary,
DainikVetanBhogi Bank Karmchari Sangathan, F-1,
Karmaboomi, triptiVihar,
OppoEngg. College, Ujjain
MP

...Workman/Union

Versus

Zonal Manager,
Bank of India,
Zonal Office,
Ujjain Zone, Ujjain,
MP

...Management

AWARD

Passed on this 17th day of January 2017

1. As per letter dated 19-1-12 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/23/2011-IR(B-II). The dispute under reference relates to:

“Whether the applicant Shri Ashok Kumar Vyas is entitled for difference of wages as paid to permanent peon for the period from 1-1-07 to 2-6-08? If yes, what relief the concerned workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Union submitted statement of claim on behalf of workman. Case of 1st party workman is that he was working as peon in the 2nd party Bank from 1-7-07. He was working 8 hours in a day. He completed 240 days continuous working. He was paid Rs.50 per day. Wages were increased to Rs.100 per day. Wages were paid on basis of reimbursement. Workman had claimed bonus and revised pay scales. His services were terminated in violation of Section 25-F. Workman raised dispute about termination of his service is pending before this Tribunal. 1st party claims that he is eligible to scale wages as per 8th, 9th Bipartite settlement Rs.4060-7560, 5500-11000. That State Bank of India, Karur Vaishya Bank, Bank of Maharashtra paid scale wages to its temporary peons, daily wage employees. Management has not paid scale wages to 1st party workman for the period 1-7-07 to 2-6-08. Management has violated bipartite settlement punishable under Section 29 of ID Act. On such ground, workman prays for payment of scale wages as per 8th, 9th settlement.

3. 2nd party filed Written Statement opposing claim of 1st party workman. 2nd party submits that claimant is not member of Union. Union has no locus to raise the dispute. Employer employee relationship not existed between parties. Claimant is not workman under Section 2(s) of ID Act. That the appointments in the 2nd party are proceeded by written test, interview, selection process. Only person appointed after following selection process is workman. Claimant has not disclosed anything regarding his employment. Claimant was not employed in the Bank on regular basis. He was not appointed against permanent sanctioned post. Claimant cannot claim regular pay scale provided to regular employees. It is further contented that Branch Managers in order to ensure smooth customer service engaged persons when there is temporary increase in work of casual nature. Such person are compensated by fair amount. Branch Manager is not Appointing Authority. Directions of Government about reservation of SC ST OBC is required to be followed by Bank. Workman was not appointed following selection process, his name was not sponsored through Employment Exchange. Daily wagers has no right to hold post. Daily wager indicates his engagement subject to availability of work. He may be given work on next day if available. The engagement for how so ever long period cannot over react the law. 1st party workman had not completed 240 days working during any of the calendar years. Branch Manager is not competent to appoint any person. The claimant is not employee under Section 25(B) of ID Act or Section 2(s) of ID Act. There was no need to issue notice or pay retrenchment compensation it is denied that services of workman were terminated in violation of Section 25-F of ID Act. All adverse contentions of 1st party are denied. It is reiterated that as 1st party workman was not regular employee of the Bank, he is not entitled to regular pay scale. That Shri Ram Nagwanshi so called General Secretary is not employee of the Bank, he is not competent to raise or prosecute the dispute under reference. 2nd party prays that reference be answered in its favour.

4. 1st party filed rejoinder reiterating his contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the applicant Shri Ashok Kumar Vyas is entitled for difference of wages as paid to permanent peon for the period from 1-1-07 to 2-6-08?	In Negative
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

REASONS

6. Ist party has not adduced oral evidence. Union Representative Shri Ram Nagwanshi submitted in writing on 3-6-16 that he had not to adduce evidence. On application for production of documents, 2nd party management produced documents. Documents are admitted by Ist party and marked Exhibit M-1 total 73 payment vouchers are admitted by management. The payment vouchers are for the period 6-1-07 to 2-6-08. Payment vouchers Exhibit M-1 shows that workman worked more than 240 days during above said period. Term of reference pertains to claim for difference of wages as per 8th, 9th bipartite settlement. Ist party has not produced those settlement on record. Rather 2nd party has produced copy of Ist Bipartite settlement dated 19-10-66. It provides clause 4.5 of Desai Award. The part time employees are entitled to pay scale wages. Workman has not adduced evidence to support his contention that every day he was working for 8 hours. The wages payable to part time employees working for 3 hours as paid by management, 3-6 hours – Rs. 5 per month, 6-13 hours in a week- 1/3rd pay scale, 13 to 9 hours in a week- half pay scale with increments, 19 to 29 hours in a week- 3/4th pay scale with increments, above 29 hours in a week- full pay scale. However workman has not adduced evidence about his working hours, as such Ist party workman has not substantiated his claim.

7. Shri A.K.Shashi for management relies on ratio held in

State of Haryana versus Surinder Kumar and others reported in 1998-II-LLJ-516. Their Lordship dealing with equal pay for equal work held that recruitment was not in accordance with rules, merely because posts were interchanged, daily wagers on contract basis could not become entitled to pay scale.

In case between Indian Drugs and Pharmaceuticals Ltd versus workmen Indian Drugs and Pharmaceuticals Ltd. Reported in 2007(1)SCC-408. Their Lordship dealing with public employment held the Court cannot create post where none exists nor issue directions to absorb or regularize temporary employees nor continue them in service nor pay them salaries of regular employees as these are purely executive or legislative functions. Supreme Court cannot arrogate to itself powers of the executive or legislature.

Order by CAT Calcutta bench dated 13-11-09 is also submitted. The judgment by CAT has no force of binding president. The judgment therefore cannot be considered. For reasons discussed above, workman has filed to establish his working hours and eligibility for scale wages as per 8th, 9th bipartite settlement. Therefore I record my finding in Point No.1 in Affirmative.

8. In the result, award is passed as under:-

- (1) The workman Shri Ashok Kumar Vyas is not entitled for difference of wages as paid to permanent peon for the period from 1-1-07 to 2-6-08.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 16 फरवरी, 2017

का.आ. 421.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 72/09) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-12011/52/2009-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th February, 2017

S.O. 421.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 72/09) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of UCO Bank and their workmen, received by the Central Government on 16.02.2017.

[No. L-12011/52/2009-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

NO. CGIT/LC/R/72/09

General Secretary,
Dainik Vetal Bhogi Bank Karamchari Sangathan,
F-1, Karambhoomi, Tripti Vihar,
In front of Engineering College,
Ujjain

...Workman/Union

Versus

Managing Director,
UCO Bank,,
Head Office, 10-BTM Sarni

...Management

AWARD

Passed on this 23rd day of January 2017

1. As per letter dated 12-8-09 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/52/09-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Managing Director, UCO Bank, Head Office, 10-BTM, Sarni Kolkata-I in not regularizing the services of Shri Rantanlal Ben, peon UCO Bank, Jawaharganj Branch, Jabalpur w.e.f. 26-9-90 after completing the 8 years service as daily wages worker is legal and justified? What relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. On behalf of workman statement of claim is filed by Union. The case of Ist party workman is with object to deny appointment on basis of panel list, Ist party workman as engaged on daily wages in Krishinagar branch, Jabalpur on daily wages from 29-8-88 till 24-9-90. He was paid wages under different names so that workman does not get benefit of bipartite settlement dated 12-10-89. That from 26-9-90, he was engaged in Jawaharganj branch of UCO Bank. He was paid wages in his name. he was performing work of duties carrying special allowance in Jawaharganj branch. Work of cash peon was also taken from him during period of absence of daftary. Workman claims to be eligible for special allowance under Ist to VIIth settlement. That after voluntary retirement of Daftary Madanlal Thakur and promotion of Gajendra as clerk from peon post of daftary was lying vacant from 1-6-05 to 31-0-07. The work of arranging payment vouchers in bundles was extracted from him. Workman claims eligible for special cash allowance as peon/ daftary.

3. 2nd party filed Written Statement opposing claim of workman. Claim of workman for regularization on post of peon from 29-8-90 is not tenable. Claim of Ist party is not tenable under ID Act as he was not appointed following selection process, no appointment order was issued to Ist party after selection by the Committee. Rather the Ist party is not covered as workman. That Ist party was engaged as casual worker on daily wages. He was paid wages for work performed. Workman was not selected for permanent post. The claim of workman is misleading. Presently Ist party is working on daily wages, his claim is not tenable. Workman was not appointed as permanent peon on 29-8-98. He was initially engaged as casual worker in 1994. 2nd party further submits that in 1989, list of daily wage employee was prepared. Name of claimant was not found in said panel list Ist party has not continuously worked for 240 days during any of the year. During 1994 to 2007-08, bonus was paid to the claimant. That claimant is working in department as casual worker and not on permanent post. The claims made in the statement of claim are devoid of merit. 2nd party prays for rejection of claim.

4. Ist party filed rejoinder reiterating contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Managing Director, UCO Bank, Head Office, 10-BTM, Sarni Kolkata-I in not regularizing the services of Shri Rantanlal Ben, peon UCO Bank, Jawaharganj Branch, Jabalpur w.e.f. 26-9-90 after	In Affirmative
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completing the 8 years service as daily wages worker is legal and justified?	
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

6. Point No.1- The term of reference pertains to denial of regularization in service of Ist party claimants. The claimant filed affidavit of his evidence. However he remained absent for his cross-examination. His evidence could not be considered.

7. Management failed to adduce evidence. Evidence of management is closed on 4-5-2016.

8. As both parties did not properly participate in reference proceeding, for failure of claimant to appear for his cross-examination, his evidence cannot be accepted. The claim of Ist party workman is not supported by any evidence therefore I record my finding in Point No.1 in Affirmative.

9. Point No.2- In view of my finding in Point No.1 claim of Ist party is not supported by evidence, claim of workman cannot be allowed. Accordingly I record my finding in Point No.2.

10. In the result, award is passed as under:-

- (1) The action of the management of Managing Director, UCO Bank, Head Office, 10-BTM, Sarni Kolkata-I in not regularizing the services of Shri Rantanlal Ben, peon UCO Bank, Jawaharganj Branch, Jabalpur w.e.f. 26-9-90 after completing the 8 years service as daily wages worker is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 16 फरवरी, 2017

का.आ. 422.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 28/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-12011/194/2000-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th February, 2017

S.O. 422.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 16.02.2017.

[No. L-12011/194/2000-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/28/2001

Assistant General Secretary,
MP Bank Employees Association,
Parvana Bhawan, Aminpara,
Raipur

...Workman/Union

Versus

Regional Manager,
Punjab National Bank,

Raipur Region,
Madina Manjil, Medical College Road,
Raipur

...Management

AWARD

Passed on this 19th day of January 2017

1. As per letter dated 29-12-00 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12011/194/2000/IR(B-II). -The dispute under reference relates to:

“Whether the action of the management of Punjab National Bank, Raipur Region, Raipur (MP) in terminating the services of Shri J.R.Banjare, Clerk Cum Cashier of Mungeli Branch, Distt. Bilaspur (MP) w.e.f. 18-12-97 is justified? If so, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party Employees Association submitted statement of claim at Page 7/1 to 7/4. Case of Ist party Association is that Shri J.R.Banjare CSE was employed by Bank at Rajamarg Branch w.e.f. 15-3-82. He was promoted as clerk-cum-cashier in Mungeli branch since 10-11-89. That In 13th April 96, agitation including one day strike was held. Ist party CSE prayed leading role in highlighting the incident bringing matter to the Association. Bank authorities were very much annoyed in order to victimize him, cooked up case. The CSE was suspended on 4-7-96. Chargesheet was issued to him on 15-7-96 alleging misappropriation. The Disciplinary Authority appointed Shri A.K.More, Enquiry Officer. It is alleged that enquiry was not properly held. The charges alleged against workman were not proved. The findings of Enquiry Officer are not supported by evidence. Showcause notice was issued to workman on 12-11-97 proposing punishment of removal, written submissions were submitted by CSE. CSE had not confessed his guilt. Punishment of dismissal imposed against workman is illegal. Appeal preferred by workman was rejected. The order of removal was not reasoned and speaking. It is reiterated that the charges alleged against workman are not proved. The punishment imposed against workman is by way of victimization. CSE be reinstated in service.

3. 2nd party filed exhaustive Written Statement opposing claim of workman on 7-4-04. 2nd party submits that CSE Banjare was suspended on 15-7-96. Chargesheet was issued to CSE for gross misconduct of (i) Mis-appropriation of amounts received by Shri Banjare from the depositors for credit to their accounts with the branch, (ii) incurring debts from Bank's customers by mis-utilising official position and not returning the amount borrowed., (iii) getting discounted SF withdrawals without sufficient balance in the accounts, (iv) undue delay in adjusting the advance taken against TA Bill. Shri Arun Kumar Omray was appointed as Enquiry Officer. Enquiry was conducted as per rules. Oral and documentary evidence was recorded during enquiry. Enquiry Officer submitted his report holding charges except getting discounted SF withdrawals without balance in the account were established in the Departmental Enquiry. It is reiterated that considering proved charges against workman after issuing showcause notice and punishment of removal from service has been imposed, dispute is that workman cannot compare with Shri S.K.Nande who was prosecuted in criminal case and acquitted on 14-6-07. The appeal preferred by CSE was dismissed. It is reiterated that workman was paid wages due. 2nd party prays reference be answered in its favour.

4. As per order dated 13-3-2015, enquiry conducted against workman is found proper and legal.

5. Considering pleadings on record and order on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against CSE/ workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman/ CSE is proper and legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

REASONS

6. Point No.1- Enquiry conducted against workman / CSE is found legal. Whether misconduct alleged against workman/ charges are proved needs to be decided considering evidence in Enquiry Proceedings. The legible typed copy of Enquiry Proceeding is made available. In Enquiry Proceedings, statements of Presenting Officer was recorded,

the documents related to voucher for Rs.3500 credit Advance voucher ODD-1/94, letter of Rs.1500, withdrawal slip, debit voucher for Rs.1500, TA Bill of Rs.371, Debit Voucher of Rs.129, TA Bills in name of CSE Rs.371, transfer credit voucher of Rs.500 were produced before Enquiry Officer. Documents were duly given Exhibit Numbers. Statement of MW-1 M.C.Jain was recorded. Said witness has explained about procedure and documents produced. CSE did not examine any witness in support of his defence. CSE did not participate in reference proceeding. He has not adduced any evidence. Evidence of Ist party on preliminary issue was closed on 10-6-14. His evidence on other issues was closed on 21-7-6. The evidence before Enquiry Officer needs no re-appreciation.

7. On the point Shri A.K.Shashi relied on ratio held in case between

Workmen of Balmadies Estates versus management of Balmadies Estates and others reported in 2008(4)SCC-517. Their Lordship held that Labour Court can in an appropriate case consider the evidence which has been considered by the domestic tribunal and in a given case on such consideration arrive at a conclusion different from the one arrived at by the domestic tribunal.

In case between Union of India and others versus B.K.Shrivastva reported in 1998-6-SCC-340 dealing with scope of judicial review held the charges against respondent related to misappropriation of money while working as cashier. On ground that principles of natural justice were not observed while conducting enquiry. However it was found that on several opportunities were given to the respondent in Enquiry Proceedings. Enquiry Proceedings were adjourned. The interference by CAT was held inappropriate.

In present case, workman has not adduced any evidence either on preliminary issue or on other issue. The evidence on Enquiry Proceeding is sufficient to uphold findings of Enquiry Officer. For above reasons, I record my finding in Point No.1 that misconduct alleged against workman except charge No.3 are proved.

8. Point No.2- In view of my finding in Point No.1 misconduct alleged against workman except charge No.3 has been proved. Question remains for consideration whether punishment of removal imposed against CSE is proper needs consideration. The proved misconduct against workman includes an act of misappropriation is certainly gross misconduct.

9. Considering the proved misconduct against CSE, in my considered view punishment of removal from service does not call for interference. For above reasons, I record my finding in Point No.2 in Affirmative.

10. In the result, award is passed as under:-

- (1) The action of the management of Punjab National Bank, Raipur Region, Raipur (MP) in terminating the services of Shri J.R.Banjare, Clerk Cum Cashier of Mungeli Branch, Distt. Bilaspur (MP) w.e.f. 18-12-97 is legal and proper.
- (2) The CSE/workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 16 फरवरी, 2017

का.आ. 423.—आौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट आौद्योगिक विवाद में केन्द्रीय सरकार आौद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 121/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-12012/88/1996-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th February, 2017

S.O. 423.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 121/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 16.02.2017.

[No. L-12012/88/1996-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,

JABALPUR

NO. CGIT/LC/R/121/97

Assistant General Secretary,
 Punjab National Bank Employees Association,
 Through PNB, Sadar Bazar,
 Jabalpur (MP)

...Workman/Union

Versus

Regional Manager
 Punjab National Bank, 124, Napier Town,
 Jabalpur

...Management

AWARD

Passed on this 3rd day of January 2017

1. As per letter dated 3-12/5/97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/88/96-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Punjab National Bank, Jabalpur region in recovering the salary w.e.f. 13-3-92 of Shri Ram Awadh Rai after refixation vide order dated 9-5-95 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party Employees Association submitted statement of claim at Page 6/ to 6/2. Case of Ist party is that Shri Ram Awadh Rai was appointed as Armed Guard in service of the Bank on 27-2-89. Prior to his -appointment in the Bank, he was in armed forces. His pay was fixed -as per policy of the Bank Circular No. 953/86 dated 21-8-86, basic pay of workman was fixed Rs.1160/- vide letter dated 25-8-89. It was also ordered that arrears of salary be paid to those employees. Workman started to receive salary as per order. That pay of workman Shri Ram Awadh Rai was ordered to be reduced vide order dated 9-5-95 without following the legal provisions , bipartite settlement, no notice under Section 9 of ID Act was given to him before reducing his pay. That PD Circular 953/86 was not amended or superseded by other circular. The pay fixation of workman was made by Regional Office on the basis of above said circular. It is submitted that salary of workman cannot be reduced nor any recovery be made at his own whim and fancy of the management. Order dated 9-5-98 is liable to be quashed. On such ground, workman prays for setting aside order dated 9-12-98.

3. 2nd party management filed Written Statement at page 11/1 to 11/7 opposing claim of Ist party. 2nd party management submits that the Bank is nationalized. Service conditions of its employees are covered by various settlements, Sastri Award, Desai Award and circulars issued by Ministry of Finance, Government of India , binding on it. That Bank is bound to implement circulars issued by Finance Ministry. Workman was ex-army personnel. He was given re-appointment from quota of ex service men. He was appointed as armed guard on 14-8-86. The fixation of his salary after release from defence service was made on the basis of instruction received from Government of India Circular dated 21-8-86. Subsequent clarification was received to the effect that special allowance paid for armed guards/ watchman/ stenographers etc. are to be taken into account while protecting the last pay and DA drawn by the ex-servicemen at the time of release from the armed forces. Ex-servicemen in defence forces would be protected with pay plus DA in Bank. The basic pay in Bank's pay scale would be fixed after deducting DA admissible in Bank from aggregate pay + DA by re-employing ex-service men at time of release of armed forces. Bank complied instructions issued by Government time to time.

4. It is further submitted that Bank's Association vide letter dated 13-3-92 intimated that the Government of India, Ministry of Finance desired that it be clarified to all the banks that it would be necessary to ensure that the basic pay plus DA plus special allowance for armed guards/ watchmen are taken into account while protecting the last drawn pay at the time of retirement/ discharge from the service of armed forces. It was further stated that protection pay with special allowance component would also be relevant if the ex servicemen are recruited as stenographers and for any other special allowance carrying posts in clerical/ subordinate guards. That on 8-8-93, as a result of references from a number of banks, Indian Banks association considered the issue in the personnel committee of the association and after discussing the issue at length and taking into consideration the partial difficulties that Banks encountered in making refitment and recovery thereof decide that clarification given vide letter dated 13-3-92 may be made applicable w.e.f. prospective date and also with recoveries that may arise on account of re-fixation of pay. The matter was taken up with Ministry of Finance, Government of India and the Government conveyed their approval on the ground that pay

fixation of armed guards in terms of IBA letter dated 13-3-92 be made only in respect of armed guards who joined Bank on or after 13-3-92 an excess payment if any made to them be recovered. The pay fixation of armed guards who joined the banks prior to 13-3-92 may also be re-fixed by re-opening the cases but recovery of excess payments if any made to them may be waived and since there are possibilities of yet other posts in the public sector banks carrying special allowance to which ex-servicemen might have been appointed, this decision may also be applied to such posts. However as per clause(b) had created certain confusion and accordingly vide letter dated 10-11-94 Indian Banks Association clarified that they had taken up the matter with Government as regards recovery of excess payments made after 13-3-92. It is further stated that the Government has since confirmed that recovery of excess payments made is to be waived only upto 13-3-92 and the recovery is to be made after 13-3-92. It is reiterated that Union cannot raise issue of pay protection of ex-servicemen which doesnot find place in service conditions. It is reiterated that only basic pay and DA are to be taken into account as per order dated 12-12-94. PD Circular dated 12-12-94 was challenged in Writ Petition before Punjab and Haryana High Court. Circular was quashed. Court however left open to the Bank to proceed the case in accordance with the principles of natural justice. On above point, 2nd party contends that the wages of workman were re-fixed. Excess payment made after 13-3-92 has been recovered vide letter dated 19-5-95 is legal. Claim of Ist party deserves to be rejected.

5. Ist party filed rejoinder at Page 13/1 to 3/2 reiterating contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Punjab National Bank, Jabalpur region in recovering the salary w.e.f. 13-3-92 of Shri Ram Awadh Rai after re-fixation vide order dated 9-5-95 is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

7. The terms of reference pertains to legality of recovery of excess salary from 13-3-92 as per order dated 9-5-95. Workman filed affidavit of evidence supporting his contentions in statement of claim. That his pay was fixed as per circular dated 21-8-86. That he had joined service on 7-3-89. That management without issuing showcause notice or amending circular dated 21-8-86 reduced his pay as per order dated 9-5-95. His affidavit is also devoted about the judgment and order by Punjab and Haryana High Court. In his cross, workman says he was retired from army in July 1988. He was appointed as security guard, his pay was fixed at the time of his appointment as per the rules. Pay of employees is fixed as per the rules settled by Indian Bank Association. His pay was re-fixed as per circular. Earlier his pay fixed was higher.

8. Management filed affidavit of Shri Rajesh Kumar Sharma. However he did not appear for his cross-examination.

9. As Ist party workman himself says his pay was re-fixed as per circular, the claim of workman cannot be accepted. Therefore I record my finding in Point No.1 in Affirmative. Therefore workman is not entitled to any relief.

10. In the result, award is passed as under:-

- (1) The action of the management of Punjab National Bank, Jabalpur region in recovering the salary w.e.f. 13-3-92 of Shri Ram Awadh Rai after re-fixation vide order dated 9-5-95 is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 16 फरवरी, 2017

का.आ. 424.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 114/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-12012/432/1995-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th February, 2017

S.O. 424.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 114/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 16.02.2017.

[No. L-12012/432/1995-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/114/97

Assistant General Secretary,
Punjab National Bank Employees Association,
Through PNB, Sadar Bazar,
Jabalpur (MP)

...Workman/Union

Versus

Regional Manager
Punjab National Bank, 124, Napier Town,
Jabalpur

...Management

AWARD

Passed on this 3rd day of January, 2017

1. As per letter dated 21-4-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/432/95-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Punjab National Bank, Jabalpur region in recovering the salary w.e.f. 13-3-92 of Shri Subeg Singh after refixation vide order dated 9-5-95 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party Employees Association submitted statement of claim at Page 6/ to 6/2. Case of Ist party is that Subeg Singh was appointed as Armed Guard in service of the Bank on 14-8-86. Prior to his appointment in the Bank, he was in armed forces. His pay was fixed as per policy of the Bank Circular No. 953/86 dated 21-8-86, basic pay of workman was fixed Rs.1160/- vide letter dated 25-8-89. It was also ordered that arrears of salary be paid to those employees. Workman started to receive salary as per order. That pay of workman Subeg Singh was ordered to be reduced vide order dated 9-5-95 without following the legal provisions, bipartite settlement, no notice under Section 9 of ID Act was given to him before reducing his pay. That PD Circular 953/86 was not amended or superseded by other circular. The pay fixation of workman was made by Regional Office on the basis of above said circular. It is submitted that salary of workman cannot be reduced nor any recovery be made at his own whim and fancy of the management. Order dated 9-5-98 is liable to be quashed. On such ground, workman prays for setting aside order dated 9-12-98.

3. 2nd party management filed Written Statement at page 11/1 to 11/7 opposing claim of Ist party. 2nd party management submits that the Bank is nationalized. Service conditions of its employees are covered by various settlements, Sastri Award, Desai Award and circulars issued by Ministry of Finance, Government of India, binding on it. That Bank is bound to implement circulars issued by Finance Ministry. Workman was ex-army personnel. He was given re-appointment from quota of ex-service men. He was appointed as armed guard on 14-8-86. The fixation of his salary after release from defence service was made on the basis of instruction received from Government of India Circular dated 21-8-86. Subsequent clarification was received to the effect that special allowance paid for armed guards/ watchmen/ stenographers etc. are to be taken into account while protecting the last pay and DA drawn by the ex-servicemen at the time of release from the armed forces. Ex-servicemen in defence forces would be protected with pay plus DA in Bank. The basic pay in Bank's pay scale would be fixed after deducting DA admissible in Bank from aggregate pay + DA by re-employing ex-service men at time of release of armed forces. Bank complied instructions issued by Government time to time.

4. It is further submitted that Bank's Association vide letter dated 13-3-92 intimated that the Government of India, Ministry of Finance desired that it be clarified to all the banks that it would be necessary to ensure that the basic pay plus DA plus special allowance for armed guards/watchmen are taken into account while protecting the last drawn pay at the time of retirement/ discharge from the service of armed forces. It was further stated that protection pay with special allowance component would also be relevant if the ex-servicemen are recruited as stenographers and for any other special allowance carrying posts in clerical/ subordinate guards. That on 8-8-93, as a result of references from a number of banks, Indian Banks association considered the issue in the personnel committee of the association and after discussing the issue at length and taking into consideration the partial difficulties that Banks encountered in making refitment and recovery thereof decide that clarification given vide letter dated 13-3-92 may be made applicable w.e.f. prospective date and also with recoveries that may arise on account of re-fixation of pay. The matter was taken up with Ministry of Finance, Government of India and the Government conveyed their approval on the ground that pay fixation of armed guards in terms of IBA letter dated 13-3-92 be made only in respect of armed guards who joined Bank on or after 13-3-92 an excess payment if any made to them be recovered. The pay fixation of armed guards who joined the banks prior to 13-3-92 may also be re-fixed by re-opening the cases but recovery of excess payments if any made to them may be waived and since there are possibilities of yet other posts in the public sector banks carrying special allowance to which ex-servicemen might have been appointed, this decision may also be applied to such posts. However as per clause(b) had created certain confusion and accordingly vide letter dated 10-11-94 Indian Banks Association clarified that they had taken up the matter with Government as regards recovery of excess payments made after 13-3-92. It is further stated that the Government has since confirmed that recovery of excess payments made is to be waived only upto 13-3-92 and the recovery is to be made after 13-3-92. It is reiterated that Union cannot raise issue of pay protection of ex-servicemen which doesnot find place in service conditions. It is reiterated that only basic pay and DA are to be taken into account as per order dated 12-12-94. PD Circular dated 12-12-94 was challenged in Writ Petition before Punjab and Haryana High Court. Circular was quashed. Court however left open to the Bank to proceed the case in accordance with the principles of natural justice. On above point, 2nd party contends that the wages of workman were re-fixed. Excess payment made after 13-3-92 has been recovered vide letter dated 19-5-95 is legal. Claim of 1st party deserves to be rejected.

5. 1st party filed rejoinder at Page 13/1 to 3/2 reiterating contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Punjab National Bank, Jabalpur region in recovering the salary w.e.f. 13-3-92 of Shri Subeg Singh after refixation vide order dated 9-5-95 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

7. The terms of reference pertains to legality of recovery of excess salary from 13-3-92 as per order dated 9-5-95. Workman filed affidavit of evidence supporting his contentions in statement of claim. That his pay was fixed as per circular dated 21-8-86. That he had joined service on 7-3-89. That management without issuing showcause notice or amending circular dated 21-8-86 reduced his pay as per order dated 9-5-95. His affidavit is also devoted about the judgment and order by Punjab and Haryana High Court. In his cross, workman says he was appointed as Security guard from quota of ex-service man from 14-8-86. His military service was protected. He was told about the circular dated 13-3-92 of Finance Ministry. The document Exhibit W-1 is circular dated 21-8-86 which provides protection of pay of ex-service man (pay + DA) joining Bank service before 1-9-78. The pay drawn in the armed forces protected for purpose of re-employment on or after 1-1-1978. Though 1st party has challenged order of recovery dated 9-5-95 the order is not produced on record.

8. Management's witness Arun Prakash filed affidavit of his evidence supporting contentions in Written Statement. That Government vide order dated 9-9-93 conveyed the approval that pay fixation of armed guards in terms of letter dated 13-3-92 be made prospectively and excess payment if any made to them be recovered. The pay fixation of armed guard who joined Bank prior to 13-3-92 and excess payment if any be made to them may be waived. In his cross-examination, management's witness says that first pay of workman was fixed by Regional Office. He admitted circular dated 21-8-86 Exhibit W-1. That in 1995, pay of workman was reduced. Notice was not given to him before reduction of his pay. The pay was reduced as per directions of Government of India dated 8-9-93. Bank had issued circular on

12-12-94 Exhibit M-4. The circular issued by Bank was not sent to all branches. Circular Exhibit W-1 was not cancelled. Exhibit M-1 is letter dated 13-3-92 allowing pay protection only pay and DA drawn by armed forces. Exhibit M-2 is letter dated 8-9-93 clearly shows Government conveyed approval on lines- pay fixation of armed guards as per order dated 13-3-92, excess payment made to them be recovered. The fixation of armed guards who joined service prior to 13-3-92, excess payment may be made. Exhibit M-3 is letter dated 10-11-94 in the matter of pay fixation of guards joining Bank prior to 13-3-92. The excess payment was to be waived. Exhibit M-4 is letter dated 12-12-94 on the same lines. Exhibit M-5 is copy of judgment in Writ Petition No. 109/98 by Punjab and Haryana High Court. Exhibit M-6 is copy of order passed by Supreme Court in Special Leave appeal. Hon'ble Punjab and Haryana High Court quashed the circular relating to recovery of excess payment after 13-3-92 on the ground that notice under Section 9-A was not issued. Workmen were not allowed hearing following principles of natural justice. The judgment of Punjab and Haryana High Court was confirmed by Apex Court. In present case, though the order about recovery of excess salary dated 9-5-95 is not produced, parties are not in dispute that excess amount was to be recovered by the management. As management of 2nd party has not issued notice under Section 9-A, no hearing was allowed to the workman. The order dated 9-5-95 for recovery of excess amount is illegal. For above reasons, I record my finding in Point No.1 in Negative.

9. In the result, award is passed as under:-

- (1) The action of the management of Punjab National Bank, Jabalpur region in recovering the salary w.e.f. 13-3-92 of Shri Subeg Singh after refixation vide order dated 9-5-95 is not legal.
- (2) Management is directed not to effect recovery of excess amount from the salary of workman Shri Subeg Singh as per order dated 9-5-95.

R. B. PATLE, Presiding Officer

नई दिल्ली, 16 फरवरी, 2017

का.आ. 425.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ सं. 153/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16. 02.2017 को प्राप्त हुआ था।

[सं. एल-12012/61/2012-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th February, 2017

S.O. 425.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 153/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 16.02.2017.

[No. L-12012/61/2012-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 153/2012

Shri Kunwar Pal Singh,
S/o Shri Bani Singh,
R/o 161, Sector 2-B, Vasundhara,
Ghaziabad

...Workman

Versus

The Regional Manager
Central Bank of India, Regional Office-B,
Chandni Chowk, Delhi

...Management

AWARD

A reference was received from Government of India, Ministry of Labour and employment vide letter No.L-12012/61/2012-IR(B-II) dated 18.10.2012 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:

‘Whether the action of the management of Central Bank of India in imposing the punishment of dismissal on Shri Kunwar Pal Singh, Ex-Clerk vide order dated 19.09.2008, is legal and justified? What relief the concerned workman is entitled to?’

2. Both the parties were put to notice and thereafter the workman, Shri Kunwar Pal Singh, has filed statement of claim with the averments that he was charge sheeted on 02.02.2008 with the allegations that on 23.05.2007 while working at Press Area branch, he prepared a Pay Order for Rs.4139.00 bearing serial No.46/372 for supply of table stationery to the branch. The said pay order was prepared after getting the aforesaid bill duly approved from the competent authority of the branch. Proceeds of the above pay order was deposited by the workman herein in his overdraft account No.1045700898 maintained at Jyoti Nagar branch, Delhi. Credit slip was also prepared by the workman himself and he has tendered the aforesaid credit slip of Rs.4139.00 to the passing official for passing the same. Later on, it was revealed that the corresponding debit voucher of the aforesaid credit voucher was the above-mentioned pay order in favour of Om Stationery Mart which was posted in the computer system on 31.05.2007 under the code of the workman herein and the workman also used the code and password of another passing official for authorizing the debit voucher of Rs.4139.00. Thus, he misused the code and password of passing official with malafide intention for his personal and unlawful gains.

3. Before serving charge sheet dated 02.02.2008, the workman was issued memorandum dated 21.06.2007 and he filed reply thereto on 25.06.2007. Subsequently, another memo dated 24.09.2007 was served upon the workman herein and reply to the same was filed on 29.09.2007. Reply was not found satisfactory by the Disciplinary Authority. Eventually, charge sheet dated 02.02.2008, alongwith list of documents and witnesses etc. was served upon the workman herein. Record of the case also shows that reply to the above charge sheet was filed. Evidence of the witnesses was recorded by the Enquiry Officer. Shri R.C. Dixit, the Presenting Officer, was the Assistant Manager at Press Area branch of the management. Enquiry Officer gave her report dated 19.06.2008 to the Disciplinary Authority and written submissions dated 04.07.2008 were also filed by the workman herein against the findings of the Enquiry Officer. Thereafter, show cause notice dated 28.08.2008 was served upon the workman herein by the Disciplinary Authority, i.e. Shri S.D. Mishra, Regional Manager in terms of findings dated 19.06.2008 of the Enquiry Officer and punishment proposed was ‘charge sheeted employee be dismissed without notice’. Thereafter, personal hearing was given to the workman herein on 10.09.2008 and thereafter he was dismissed vide order dated 19.09.2008.

4. The workman has filed statutory appeal dated 03.11.2008 under Clause 14 of the Memorandum of Settlement. However, the same was dismissed on 18.03.2009 resulting in confirmation of the punishment. The said order dated 18.03.2009 is non-speaking and unreasoned. Mercy appeal was also filed on 10.06.2009 which was not entertained by the Appellate Authority, being barred by rules.

5. There were co-delinquents Shri H.B. Johri and Shri J.K. Sharma, both Managers who were also charge sheeted on the above set of facts. However, they were awarded lesser punishment and the workman was discriminated and victimized.

6. Workman herein has alleged that report of the Enquiry Officer is contrary to the facts and unreasoned. Findings given by the Enquiry Officer are alleged to be contrary to the evidence on record.

7. Reply to the statement of claim has been filed on behalf of Central Bank of India (management). It is clear from the reply filed that the workman herein was working as clerk and was posted at Press Area branch, New Delhi and the workman has prepared the Pay Order, as discussed above, for Rs.4139.00 bearing serial No.46/372 for supply of table stationery to the branch. Proceeds of the above pay order were deposited by the workman in his overdraft account bearing No.1045700898 maintained at Jyoti Nagar branch, Delhi. Thereafter, show cause was issued to the workman herein who has filed reply thereto. Reply filed by the workman was not found to be satisfactory, therefore management issued letter dated 09.10.2007 to the workman informing him that disciplinary action is contemplated against him. Thereafter enquiry was conducted, which was concluded on 29.04.2008. Workman was given full opportunity to defend his case during the course of enquiry. Copy of enquiry proceedings is Annexure 9. The Disciplinary Authority agreed with the findings recorded by the Enquiry Officer and finally passed order of ‘dismissal from service without notice’ as per Para 6 of the Memorandum of Settlement.

8. Against this factual background, my learned predecessor, on the basis of pleadings of the parties, vide a order dated 01.02.2013 framed the following issues:

- (i) Whether enquiry conducted by the management was just, fair and proper?

- (ii) Whether punishment of dismissal from service commensurate to the misconduct committed by the claimant?
- (iii) As in terms of reference.

9. Issue No.(i) was treated as preliminary issue and thereafter opportunity was given to both the parties to adduce evidence on this issue.

10. Workman herein has filed his affidavit Ex.WW1/A, which is on the same lines as per averments contained in the statement of claim. Similarly, management examined Ms.Sarita Madan, whose affidavit is Ex.MW1/A. Both the parties tendered in evidence documents during the course of evidence. I would be referring to the same while drawing my conclusions.

11. Before I proceed to consider comparative merits of the submissions, it is necessary to refer to the charge sheet issued to the claimant and the same is as under:--

On 22.05.2007, while working at BO: Press Area, Mr. K.P. Singh, prepared a pay order for Rs.4,139.00 bearing serial No.46/372 and Printed No.031609 in favour of M/s Om Stationery Mart, being the payment of their bill No.207 for Rs.4,139.00 dated 12.05.2007 for supplying table stationery to the branch. The said pay order was prepared after getting the aforesaid bill duly approved from the Competent Authority of the branch.

On 31.05.2007 the proceeds of the said pay order was deposited by Mr. Singh in his overdraft account No.1045700898 maintained at BO:Jyoti Nagar, Delhi. In this entry the credit pay in slip was prepared by Mr. Singh himself and date mentioned on credit slip was 24.05.2008. On 31.05.2007, he tendered the aforesaid credit pay in slip voucher of Rs.4,139 to the passing official for passing the same by requesting him that the corresponding debit voucher would be produced for passing/authentication shortly, which was never produced to the passing official for authorization. Later on, it was revealed that corresponding debit voucher of the aforesaid credit voucher was the aforesaid pay-order in favour of M/s Om Stationery Mart, which was posted in the computer system on 31.05.2007 under code of Mr. Singh and simultaneously Mr.Singh used the code and password of another passing official for authorizing the debit voucher of Rs.4,139.00. Thus, he misused the code and password of passing official with malafide intention for his personal and unlawful gain besides getting the credit voucher passed fraudulently.

As such, Mr. Singh misappropriated Bank's funds of Rs.4,139.00 by unlawfully crediting the amount in his own account No.1045700898 maintained at BO:Jyoti Nagar. On 21.06.2007 when explanation of Shri K.P. Singh was called in this regard, he got the entry of Rs.4,139.00 reversed from his overdraft account and banker cheque for Rs.4,139.00 was again issued in favour of m/s Om Stationery Mart. Hence, the above act of Mr. Singh brought a bad name for the bank.

The above acts of Mr. K.P. Singh are prejudicial to the interest of the Bank for which he is charged with gross misconduct under para 5(j) of the Memorandum of Settlement on Disciplinary Action Procedure for workmen dated 10.04.2002.'

12. Shri K.P. Rao, learned A/R for the claimant strongly argued that during the course of domestic enquiry the workman was not supplied with the documents which were relied upon and used against the workman during the said enquiry. Similarly, the workman was not afforded an opportunity to cross examine the witness after re-examination of the said witness. In this regard, attention of the Tribunal was invited to the enquiry proceedings (Page 64 of the domestic enquiry file). Ms. Sarita Madan was the Enquiry Officer in the above case and after closure of the cross-examination of Shri H.P. Johri, who was examined by the management as MW1, the defence evidence of the claimant was closed. She has also admitted that on 29.04.2008, permission to re-cross examine Shri Johri, MW1 was denied for the reasons that scope of re-examination is limited and the same is confined only if ambiguities cropped up in cross-examination. However, it is clear from the record that cross-examination was not confined to any ambiguity but specific question of different nature was put to the witness during the course of re-examination. It is settled position in law that once a party has been re-examined, the opposite party is to be afforded an opportunity to cross examine the witness on the statement given during the course of such re-examination.

13. Per contra, Shri A.R. Verma, A/R appearing on behalf of the management supported findings contained in the enquiry report dated – and urged that no prejudice has been caused to the workman due to denial of permission to cross examine Shri Johri or non-production of documents/show cause issued to the workman. It was also urged that strict principles of Evidence Act are not applicable in a domestic enquiry. As such, mere denial of cross-examination after re-examination of the party is not fatal to the case.

14. After hearing learned authorized representatives of the parties, I do not find merit in the contention of the management. There is merit in the contention of the workman that he was not supplied with the documents as desired

by him during the course of domestic enquiry. In this regard it is appropriate to have a look at the document Ex.MW1/4. The Presenting Officer has specifically mentioned (page 53 of the proceedings of domestic enquiry) that the documents listed at serial Nos.7, 8, 9 and 10 demanded by the witness are of 'privilege nature', that is why these documents cannot be supplied. During the course of arguments, this Tribunal wanted to know from the learned authorized representative of the management as to how these documents can be termed to be privileged when reliance upon the same is being placed by the management during conduct of the domestic enquiry. The learned authorized representative of the management could not cite any provision of law or rulings of any court so as to justify denial of the above documents. Moreover, these documents have been prepared by the bank in the discharge of official duty. They are in the form of attendance register etc. and by no stretch of reasoning they can be claimed to be privileged documents or privileged communications, which are protected under section 124 - 127 of the Evidence Act. I find support to this view of mine from the judgement of the Hon'ble Apex Court in the case of Bilaspur Raipur Kshetriya Gramin Bank vs. Madanlal Tandon (2015 Lab.I.C. 3757) wherein the delinquent official was a Field Supervisor in a bank and was charge sheeted for misconduct resulting in stoppage of two annual increments. Finally when matter reached before the Hon'ble Apex Court, it was held that documents on which reliance was placed by the Enquiry Officer for framing the charges were not supplied to the delinquent official. Moreover, no list of documents and witnesses was also supplied in the said case. Same was held to be fatal to the case of the management. Similar view appears to be taken in the case of Tirlok Nath vs. Union of India (1969 SLR 759) wherein it was reiterated that public servant has to be furnished with all the relevant documents, i.e. documents which are to be relied upon by the Enquiry Officer or required by the public servant for his defence, failing which enquiry was held to be in violation of principles of natural justice.

15. It was also argued with much vehemence that the punishment awarded to the workman herein is disproportionate, particularly with the other two co-delinquents have been awarded very less punishment by the management by imposing punishment of withholding of one increment with cumulative effect. Since in the case in hand, fair opportunity to cross-examine the witness Shri Johri after his re-examination was not afforded to the workman nor was the workman supplied with the documents mentioned at serial Nos.7, 8, 9 and 10 of the list of documents relied upon by the management during the course of domestic enquiry, as such, this Tribunal is of the considered opinion that the above act of the management is totally illegal and in negation of the principles of natural justice.

16. This Tribunal vide order dated 29.02.2014 has held that the domestic enquiry conducted by the management is unfair and against principles of natural justice. Thereafter, an application was moved by the management seeking permission to prove misconduct of the workman on merits. The said application was also contested by the workman, who has specifically alleged in the reply that management, in its written statement, has nowhere sought permission to prove charges of misconduct leveled against the workman on merits, in case domestic enquiry is found to be unfair or bad in law. Not only this, even on conclusion of the domestic enquiry or during currency of the proceedings after framing of issues by this Tribunal, no effort was made by the management to seek permission of this Tribunal to adduce evidence on merits in case findings on the domestic enquiry is held to be unfair and void under the law. This Tribunal placed reliance upon the case of Shambu Nath Goyal vs Bank of Baroda, which was later on approved by the Hon'ble Apex Court in Karnataka State Road Transport Corporation Vs Laxmidevamma (2001 Lab.I.C 777) holding that the management has forfeited its right to adduce evidence on merits as it has not reserved its right in the written statement or pleadings nor requisite application was moved by the management till conclusion of the domestic enquiry or findings rendered on domestic enquiry by this Tribunal. Resultantly, the said application was also rejected by this Tribunal vide order dated 31.11.2016.

Issue No.2

17. Now, the residual question is, whether punishment of dismissal from service commensurate to the misconduct committed by the claimant since this Tribunal has already held that domestic enquiry conducted by the management is unjust, unfair and against principles of natural justice. As such, question of proportionality of punishment pales into insignificance inasmuch as nothing survives against the claimant in the form of misconduct. Question of gravity of misconduct or punishment so awarded would have been relevant only if the findings of this Tribunal on domestic enquiry been in favour of the management.

18. As a sequel to my above discussion, it is held that action of the management of Central Bank of India, i.e. the management, in imposing punishment of dismissal of Shri Kunwar Pal Singh, claimant herein vide order dated 19.09.2008 is not legal and justified under the law. As a necessary corollary, the claimant is entitled to be reinstated in service with all consequential benefits. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : January 3, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 16 फरवरी, 2017

का.आ. 426.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 14/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-12012/446/1995-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 16th February, 2017

S.O. 426.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 16.02.2017.

[No. L-12012/446/1995-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**
NO. CGIT/LC/R/14/97

Shri N.S.Mane,
60, Bada Bhai, Lalbagh Road,
Indore

...Workman

Versus

Regional Manager,
Central Bank of India,
690, Shastri Nagar,
Ratlam (MP)

...Management

AWARDPassed on this 5th day of January, 2017

1. As per letter dated 3-1-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/446/95-IR(B-2). The dispute under reference relates to:

“whether the action of the management of Central Bank of India, Regional Office, Ratlam in terminating the services of Shri N.S.Mane, Daftri cum peon, Central Bank of India, Jaora Branch, Distt. Ratlam w.e.f. 3-2-93 is legal and justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 5/1 to 5/6. Case of Ist party workman is that he was permanent employee of the Bank. Chargesheet was issued to him alleging misconduct that he accepted money from account holder for depositing in their account but amount was not actually deposited. He deposited less amount and grabbed Rs.25,700/- Workman submitted detailed reply to the chargesheet. DE was conducted against him was empty formality. Enquiry Officer conducted enquiry with pre-determined mine to hold him guilty. He was not offered opportunity for defence. Enquiry Officer acted as a prosecutor. Enquiry Officer himself instructed witnesses of management to give statement so that workman be held guilty. Workman was not allowed to cross examine witnesses freely. Enquiry Officer interrupted in cross-examination of witnesses. Enquiry Officer held him guilty for the misconduct alleged. Account holders had withdrawn amount from their accounts, entries were also made in the passbooks. No complaint was submitted by account holders about receiving less amount. Counter folio slip returned to the depositors. During the period allegation made against workman, he was on leave. It was alleged in the chargesheet that account holder Manzoor Khan given money to workman for depositing in his account. Workman deposited less amount. Workman submits that Manzoor Khan was granted loan for purchasing tempo taxi. Permit for plying the tempo was granted to Shri Manzoor Khan by the RTO.

However Manzdoor Khan has no adequate fund for purchasing the tempo, he sold the permit to one Shri Nanhe Miya and infact Shri Nanhe Miya was operating the account of Shri Manzoor Khan. Shri Nanhe Miya again sold the permit illegally to Shri Ibrahim and Shri Ibrahim with connivance of Branch Manager Shri Sharma get the loan sanctioned in name of Shri Manzoor Khan. Ibrahim had an apprehension that Shri Manzoor Khan will claim ownership of tempo therefore for a security of his fund, he also opened an account in the bank and also obtained an agreement notified before the notary in which Shri Manzoor Khan has given consent and agreed that Shri Ibrahim will get the possession of tempo and depositing the money in the Bank. He will not claim the ownership of tempo. Workman further contented that officers were involved in the illegal transaction between Shri Manzoor Khan and Shri Ibrahim, a false story was concocted against the workman for issuing chargesheet taking advantage of workman's writing on deposited withdrawal slips. Bank Authorities themselves occasionally asked him to fill withdrawal slips of account holders. Cash clerk and other employees admitted before Enquiry Officer when Account Holder deposited money in the Bank, the counter folio of the deposit slip handed over the account holder only therefore the allegation that the workman has deposited less amount is frivolous as the account holder can verify the counter folio. Shri Manzoor Khan admitted in his statement that he deposited Rs.19000 in 3 times and he has received counter folio of deposit slip. Manzoor Khan produced those counter folios and pass book. The question when account holder was not delivered pass book, how he withdrawn money from account. It is contented that amount was withdrawn by Ibrahim having passbook in his possession. Shri Manzoor Khan admitted permit of tempo, counterfolio for deposit receipt, other documents were in custody of Ibrahim. It is practice in the Bank when ever any Account Holder come for withdrawal, he has to give pass book with withdrawal slip to counter clerk and the pass book and withdrawal slip send to the accountant who made the entry in the pass book. there was no evidence in the enquiry. The practice in the Bank was violative of the rules. Shri Manzoor Khan in his cross admitted Ibrahim cheated him getting his signatures on notarized agreement. It is reiterated that amount was deposited by Account Holders. That he was not authorized to take entry in the documents. That the findings of Enquiry Officer are perverse. Misconduct alleged against him is not proved. On such ground, workman prayed for his reinstatement with full backwages.

3. 2nd party management filed Written Statement at Page 8/1 to 8/7 opposing claim of workman. 2nd party submits that Ist party workman was its employee posted at Jawra branch. He was involved in the fraud while working in the branch. Workman was given full opportunity before termination of his services. In enquiry, it was found that workman accepted money from Account holders and not depositing in the Bank account. Reply was not found satisfactory. Enquiry was conducted giving full opportunity to the workman. Enquiry Officer acted as prosecutor. It is denied that Enquiry Officer instructed witness of management to give statement in a particular manner. Witnesses were cross-examined. Documents Exhibit M-1 to 55 were produced in the enquiry. Workman availed opportunity to produce defence witnesses, no body appeared to support his defence. enquiry was conducted properly. Enquiry was started on complaint from account holders Exhibit M-18 to M-20. it is denied that Bank officers were involved in illegal transaction between Manzoor Khan and Ibrahim. It is denied that the chargesheet was issued to workman on concocted story. During enquiry, documents were proved. The findings of Enquiry Officer holding workman guilty is supported by evidence. For proved misconduct, punishment of dismissal was imposed against workman. Claim of workman for reinstatement with full backwages is not tenable.

4. During pendency of reference proceeding, workman died. His LRs Kamlabai, Kanta and Hemant were brought on record.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether enquiry conducted against workman is legal and proper?	Parties failed to participate as such reference couldnot be decided on merit.
(ii) Whether misconduct alleged against workman are proved from evidence in Enquiry Proceedings?do....
(iii) Whether the punishment of dismissal imposed against workman is legal and proper?do.....
(iv) If so, to what relief, workman is entitled to?"	Workman is not entitled to any relief.

REASONS

6. The term of reference pertains to legality of termination of services of workman. It is unfortunate that after death of deceased workman, eventhough LRs are brought on record, no evidence is adduced. Management also not produced any evidence. Record of enquiry is also not produced. As both parties failed to effectively participate in

reference proceeding, the dispute under reference could not be decided on merit. Accordingly I record my finding in Point No. to 3.

7. In the result, award is passed as under:-

- (1) Both parties failed to participate in reference, reference could not be decided on merit.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 16 फरवरी, 2017

का.आ. 427.—माननीय राष्ट्रपति जी के आदेशानुसार न्यायाधीश सुरेन्द्र विक्रम सिंह राठौर को 02.02.2017 से 65 वर्ष की आयु पूरी होने तक अर्थात् 14.08.2019 तक या अगले आदेशों तक, जो भी पहले हो, 80,000 रुपये के वेतनमान में केन्द्रीय सरकारी औद्योगिक न्यायाधिकरण-सह-श्रम न्यायालय/राष्ट्रीय औद्योगिक न्यायाधिकरण-I, मुंबई का पीठासीन अधिकारी नियुक्त किया जाता है।

[सं. ए-19011/02/2017-सीएलएस-II]

एस. के. सिंह, अवर सचिव

New Delhi, the 16th February, 2017

S.O. 427.—The President is pleased to appoint Justice Surendra Vikram Singh Rathore as Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court/Natioanl Industrial Tribunal-I, Mumbai in scale of pay of Rs. 80,000 with effect from 02.02.2017 and upto the age of 65 years i.e. up to 14.08.2019 or until further orders, whichever is earlier.

[No. A-19011/02/2017-CLS-II]

S. K. SINGH, Under Secy.

नई दिल्ली, 17 फरवरी, 2017

का.आ. 428.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एअर इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, दिल्ली के पंचाट (संदर्भ संख्या 27/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2017 को प्राप्त हुआ था।

[सं. एल-20013/2/2017-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 17th February, 2017

S.O. 428.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi (filed under Section 2-A in the matter of I.D. No. 27 of 2014) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. Air India and their workmen, which was received by the Central Government on 17.02.2017.

[No. L-20013/2/2017-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI

Present:- Shri Harbansh Kumar Saxena

ID.No. 27/14

Nishant Kumar Sharma, S/o Late Sh. Suresh Kumar Sharma,
R/o H.No. 523, Village Rangpuri,
Mahipalpur, New Delhi

...Workman

versus

1. M/s. Air India,
Working place, Indira Gandhi International Airport,
New Delhi.
2. M/s. Air India Sats Pvt. Ltd.,
113, Airline House, Gurudwara Rakab Ganj Road,
New Delhi-11000 ...Management

NO DISPUTE AWARD

On 15.4.2014 workman filed claim statement before this Tribunal. Which was registered as ID. No. 27/14.

Where-in he alleged that he was engaged as C.S.A by management on 13.01.2011 by monthly wage of Rs. 13,500/-.

He protested for seeking demands provided in Labour Laws etc.

Annoyed with which management illegally terminated the services of workman on 1.08.2013.

Then he filed aforesaid claim statement. Where-in he mentioned details and prayed for reinstatement with full back wages etc.

After service Respondent No. 2 filed its written statement. Where-in he denied the allegations of workman and prayed for dismissal of claim statement. Which is devoid of merits.

Against written statement of Respondent No. 2 workman filed rejoinder. Where-in reaffirmed the contents of claim statement.

On 21.04.2015 I framed following 6 issues:-

1. Whether workman/claimant was illegally terminated by management? If so, its effect?
2. Whetehr present Industrial Dispute is maintainable under I. D. Act? If so, its effect?
3. Whether willful absence from work without information /prior approval calls for action against workman? If so its effect?
4. Whether terms of contract has been breached by workman? If so, its effect?
5. Whether workman is entitled for reinstatement alongwith all back wages etc.
6. Whether workman is entitled for Rs. 10,000 as expenses of the Industrial Dispute?

And fixed 4.6.2015 for workman evidence.

Workman did not turn up on 4.6.2015, hence case was adjourned to 17.07.2015.

On 17.07.2015 adjournment has been sought on behalf of workman and case was adjourned to 21.08.2015.

On 21.08.2015 workman filed his affidavit in his evidence. Copy of which supplied to Ld. Proxy Counsel for the management.

Fixed 13.10.2015 for tendering of affidavit and cross-examination of workman. But workman has not turn up on 13.10.2015, 8.12.2015, 20.01.2016, 15.03.2016, 2.05.2016, 8.6.2015 to tender his affidavit and for cross-examination. Hence his evidence has been closed on 8.6.2016 and fixed 28.07.2016 for management evidence/ arguments.

On 28.07.2016 Ld. A/R for the management expressed his desire not to adduce any evidence of management in want of evidence of workman.

Hence I heard the arguments of Ld. A/R for the management and reserved the Award.

I perused the record which shows that workman in support of his case adduced no evidence.

In want of which only “No dispute Award” award can be passed.

Which is accordingly passed.

Dated:-14.09.2016

HARBANSHE KUMAR SAXENA, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 429.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 47/15) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-41011/38/2015-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 429.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 47/15) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 20.02.2017.

[No. L-41011/38/2015-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 47 of 15

Between-

General Secretary,
United Trade Union Congress U.P.,
897 Civil Lines,
SitaKund,
Sultanpur, U.P.

And

Sr. Divisional Personnel Officer,
Northern Railway,
DRM Office
Hazaratganj,
Lucknow.

AWARD

- Central Government, Mol New Delhi, vide notification No. L-41011/38/2015-IR(B-I) dated 20.07.15, has referred the following dispute for adjudication to this Tribunal-
- Whether the action of the management of Northern Railway Lucknow, in not granting seniority to Sri Kamlesh Kumar son of Sri Mool Chand from the date of his initial appointment on 14.09.1973 is just fair and legal? If not, what relief the workman is entitled to?
- In the above case reference was received in this tribunal on 29.07.15 and the notices were issued to the parties to file their respective stand in writing.
- As in the course of legal proceedings claimant /plaintiff is required to file his claim first but the claimant that is the worker Sri Mool Chand has neither appeared in the case nor filed his claim statement in the case despite availing of the sufficient opportunity right from the date 28.09.15 till 17.10.16. The registered notices sent to the applicant has not been returned to this tribunal unserved, therefore, it must be presumed that the notices sent from the tribunal must have been served upon the applicant and if he failed to file his claim before the tribunal he should thank for himself and under these circumstances the tribunal is fully handicapped to appreciate the merit of the case in the absence of pleadings and proof.
- Therefore, the tribunal considering the facts and circumstances of the case is of the opinion that the claimant / applicant is not entitled for any relief for want of pleading and proof and the reference is bound to be answered against the claimant Sri Mool Chand, holding that he is not entitled for any relief pursuant to the present reference order.

6. Accordingly, the reference is answered against Sri Mool Chand.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 430.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 32/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/66/2010-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 430.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Pachim Madhya Railway and their workmen, received by the Central Government on 20.02.2017.

[No. L-41012/66/2010-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/32/2012

Shri Sukh Lal,
S/o Shri Sita Ram,
R/o Post Baklehta,
Janpad Panchayat Rithi,
Distt. Katni (MP)

...Workman

Versus

Mandal Rail Prabandhak,
Paschim Madhya Railway,
Jabalpur

...Management

AWARD

Passed on this 9th day of December 2016

1. As per letter dated 10-2-2012 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/66/2010-IR(B-I). The dispute under reference relates to:

“ Whether the demand of Shri Sukhlal Patel S/o Shri Seeta Ram who was removed from service w.e.f. 23-11-87 by the management of W.C.Rly Jabalpur to quash the order of removal from service and grant him pension w.e.f. 23-11-87 is legal and justified? To what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 1 to 5. Case of Ist party workman is that he was appointed as Gangman No. 32 on 28-8-71 at Sagoni, PWI, District Damoh under East Western Railway. He was continuously working with devotion till 26-12-86. Due to certain dispute, his services were terminated from 23-11-87. Prior to it, he was suspended on 6-12-86 though he was innocent, showcause notice was issued to him on 27-12-86 by Enquiry Officer. Enquiry was initiated against him. He had challenged order of his termination filing appeal on 26-1-88. In appeal memo, he had taken ground for examining defence witness Teerath Singh and Dalpath Singh. His appeal was rejected on 5-9-88. His mercy appeal dated 2-11-93 was rejected.

3. Workman further submits that his house was burnt in fire, the documents were destroyed. He had received compensation Rs.4300 from Tehsildar,. The information about destruction of his house by fire was given to the police. He had raised dispute before ALC, Jabalpur. After notice, conciliation had failed. The FOC was submitted to labour ministry on 23-4-2010. However as per letter dated 14-3-2011, the reference was refused. He had received said information under RTI Act. He filed Writ Petition No. 11394/11 in High Court at Jabalpur. As per the order passed in Writ Petition, the dispute has been referred. Ist party reiterates that he requested for change of Enquiry Officer as he was relative of complainant was not accepted. Enquiry was conducted in absence of AEN. Enquiry Officer did not consider said aspect. The complaint was not bearing the signature of witness. In reply to Q.7, witness santosh had stated that complaint was not bearing signature. The complaint was signed by Shri S.k.Dubey as conspiracy. The statement of Parmali was not bearing his signature was illegality in the enquiry proceedings. The principles of natural justice were not followed by Enquiry Officer. Enquiry is vitiated. Workman reiterates that he is innocent. On such ground, he prays for setting aside order of his dismissal and prays for his reinstatement with backwages.

4. 2nd party filed Written Statement opposing claim of Ist party. 2nd party submits that the services of Ist party were terminated from 23-11-87. The dispute is raised in 2010 after 23 years is not tenable. Management cannot keep record for ever. Management has received circulars w.r.t. maintenance of records prescribing the limitation for preserving the documents circular dated 9-5-05, 14-11-08, records are preserved for 10 years. Any record is not available with the management. That after termination of his service, workman collected all dues on account of PF and other heads. That the past record of Ist party was poor. Several punishments were imposed against him. Break in service for 3 days for illegal strike from 19-5-74 to 25-5-74. His absence was treated as dias-non. As per break in service, on 15-2-75, increment was withheld for one year from 1-12-83. Workman was absent from work during 26-4-72 to 27-4-72. Workman was under suspension from 11-10-74 to 7-12-74 punishment of censor was imposed against him on 17-3-82. Increment for one year was withheld for unauthorized absence from 1-12-83. One increment was held from 1-12-84. Chargesheet was issued to workman on 23-11-87. Available service record of workman is filed. Document w.r.t. statement of accounts are not available with the management. It is reiterated that as material record is not available, management is unable to offer its comments w.r.t. contentions of workman. It is denied that workman was exonerated from charges. Appropriate Government had taken decision due to delay more than 20 years. 2nd party was unable to make specific reply.

5. Ist party filed rejoinder reiterating its contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether any enquiry was conducted against workman in violation of principles of natural justice?	In Negative
(ii) Whether the demand of Shri Sukhlal Patel S/o Shri Seeta Ram who was removed from service w.e.f. 23-11-87 by the management of W.C.Rly Jabalpur to quash the order of removal from service and grant him pension w.e.f. 23-11-87 is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

7. Ist party workman has pleaded that enquiry conducted against him was not proper. The complaint was not signed by complainant. Statement of witnesses were also not signed.

8. Workman filed affidavit of his evidence supporting above contentions. That showcause notice was issued to him on 27-12-86 by enquiry Officer. He challenged order of his removal filing appeal. He had taken ground that defence witnesses Teerath singh, Dalpath Singh. Said ground was not considered in appeal. The appeal was rejected. His mercy appeal dated 2-11-93 was rejected. Documents were destroyed in fire to his house, he received compensation Rs.4300/. In his cross-examination, workman says he produced notice issued from office of ALC Exhibit W-5, W-6 are copies. Documents of appeal was destroyed in fire to his house in 1995. He received exhibit w-1 from AEN office around 1995-96. Workman in his further cross says enquiry was conducted, he received chargesheet, he participated in

enquiry. He was dismissed without completing enquiry. He denies that 4 witnesses of management were examined in the enquiry. The documents of enquiry are not with him. All the documents were burnt in fire.

9. Management's witness Rakesh Kumar Jain in his affidavit states that chargesheet was issued to workman on 27-12-86, Enquiry Officer conducted enquiry, held charges were proved. Workman was dismissed from 23-11-87. The dispute is raised after 23 years. As per circular, documents are preserved for period of 10 years. He has also referred to the circulars. Management's witness in his cross-examination says the documents of enquiry are preserved for 10 years. His affidavit of evidence is based on the service record of workman. The record of enquiry is not available.

10. Learned counsel for 2nd party Shri A.K.shashi relies on ratio held in

Case between Nedungadi Bank Ltd. And K.P.Madhavankutty and others reported in 2001(1)-LLJ-561. Their Lordship of the apex court dealing with Section 10 of ID Act held power to make reference to achieve the purpose cannot be exercised at time say after 7 years.

Reliance is also placed on ratio held in case of Chief Engineer, (Construction) versus Keshava Rao reported in 2005-11-SCC-229. Their Lordship dealing with claim for reinstatement 1 year and 5 months is not reasonable time for said purpose. Moreover in said period, respondent workman has made no effort to seek reinstatement or complained action of management. The interference by High court ordering reinstatement cannot be suspension.

In case between Indian Iron and Steel Company Ltd versus Prahlad singh reported in 2001-1-SCC-424. Their Lordship considering long delay of 13 years in raising industrial dispute no reasonable explanation given for such delay, the Industrial Tribunal rightly refused to grant any relief.

In present case, record of enquiry is not available, dispute is raised after 23 years, grievance of workman that enquiry was conducted in violation of principles of natural justice cannot be decided. The dispute raised after 23 years by workman praying to quash order of his removal and grant pension from 23-11-87 cannot be accepted. For above reasons, I record my finding in Point No.1 in negative.

11. At the time of argument, learned counsel for Ist party P.Yadav submits that workman had not received the amount of PF and other dues. The term of reference doesnot include recovery of amount of PF and other dues. The claim in that regard is not specifically made out in statement of claim. Workman may avail appropriate remedy for recovery of his dues.

12. In the result, award is passed as under:-

- (1) As dispute is raised after 23 years, demand of workman Sukhlal s/o sitaram removed from service w.e.f. 23-11-87 by management of WCL is not legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 431.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दुर्ग राजनांदगांव ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 133/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-12012/147/2005-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 431.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 133/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Durg Rajnandgaon Gramin Bank and their workmen, received by the Central Government on 20.02.2017.

[No. L-12012/147/2005-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

NO. CGIT/LC/R/133/2005

Shri Ashok Kumar Manikpuri,
S/o Gyan Das Manikpuri,
Chandmari, Diprapara, Durg (CG)

...Workman

Versus

Chairman,
Durg Rajnandgaon Gramin Bank,
Near Mundra Kunj, Vardhaman Nagar,
GE Road, Rajnandgaon (MP)

Sr. Branch Manager,
Durg Rajnandgaon Gramin Bank,
Near Deepak Lodge, Station Road,
Durg (CG)

...Management

AWARD

Passed on this 13th day of December 2016

1. As per letter dated 28-11-05 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/147/2005-IR(B-I). The dispute under reference relates to:

“Whether the action of the management in relation of Durg Rajnandgaon Gramin Bank in terminating the services of Shri Ashok Kumar Manikpuri by verbal order on 15-5-2004 instead of regularising his services as per existing guidelines is legal and justified? If not, to what relief the concerned workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party submitted statement of claim at Page 4/1 to 4/3. Case of Ist party workman is that he was initially appointed on 1-9-97 as messenger cum sweeper in Durg branch of 2nd party Bank. He worked more than 240 days in every calendar year. He worked more than 240 days from April 03 to May 04. His services were terminated without notice on 15-5-04. He was not paid retrenchment compensation, termination of his services is illegal retrenchment. Ist party workman further submits that he worked from 10 AM to 5.30 every day. He was required to open door of the Bank. He was doing cleaning work. He used to be deployed in clerical work for making entries of IBC, OBC preparation return in cheque etc. he was paid Rs. 30 per day. He was not paid wages for regular employee. That the award of NABARD is applicable to the Bank. As per conditions of NABARD, daily wage employees are entitled for regularization. That the provisions of Desai and Sastry applicable to the Bank regularizing services of its employees. Ist party workman further submits that employees engaged after him are still working in the Bank. His services were orally terminated without any justification is violative of Section 25-F,G of ID Act. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement opposing claim of workman. 2nd party submits order of reference is made assuming certain facts which exists. There is no employer employee relationship between parties. The reference is made mechanically is prejudicial to the management. 2nd party further submits it is undertaking of Government of India and Government of Chhattisgarh. It is sponsored by Dena Bank. That Bank is covered by statutory rules, regulations and circulars issued by Government of India, Ministry of Finance. That notification dated 28-9-98 provides that post of Driver cum messenger, sweepers are required to be filled after making reference to Employment Exchange, Sainik Board and other agencies, selection followed by interview by Committee. Ist party workman was engaged on daily wages for maintaining cleanliness in branch premises for morning 2 hour and evening 2 hours. Engagement of workman is illegal being his engagement disregarding the rules. Workman was not appointed by the Chairman. He was engaged by Branch Manager who was not empowered to make appointments against regular vacancy. That the Bank is bound to follow reservation policy consistent with constitution of India. The workman was not sponsored through Employment Exchange. Branch Manager is given certain advantage to get miscellaneous work done in the Bank. He has to make arrangements and amount paid by him is reimbursed. Workman was engaged on reimbursement basis is not covered as workman. Name of workman was not included in the muster roll. Engagement of Ist party workman was as stop gap arrangement on temporary basis.

4. 2nd party further submits that it is not covered as industry under Section 2(j) of ID Act. Engagement of Ist party workman 2 hours morning and 2 hours evening for sweeping, cleaning work on casual basis. Workman did not work from 10 AM to 5 PM. Engagement of workman was not full day. Workman not completed 240 days continuous service. It is denied that workman had uninterrupted worked from April 03 to May 04. Daily wager has no right to hold post. His engagement is subject to availability of work. He may be given work on next day if work is available. Daily wager is not oblige to report for duty on next day. There is no clause in NABARD Award for regularizing daily wage employees. Daily wagers were engaged by Branch Manager as per requirement of the branch. No comparison can be made by daily wager with regular employees. 2nd party submits that workman deserves to be rejected.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether it is proved that Ist party is covered as workman under Section 2(j) and 2 nd party is an industry under Section 2(j) of ID Act?	In Affirmative
(ii) Whether the action of the management in relation of Durg Rajnandgaon Gramin Bank in terminating the services of Shri Ashok Kumar Manikpuri by verbal order on 15-5-2004 instead of regularising his services as per existing guidelines is legal?	In Negative
(iii) If not, what relief the workman is entitled to?"	As per final order

REASONS

6. Point No.1- 2nd party has contented that workman was engaged on daily wages as per requirement by Branch Manager. However he is not covered as workman under Section 2(s) of ID Act. That the Bank is not covered as Industry under Section 2(j) of ID Act. Section 2(s) of ID Act does not include casual or daily wage labours. 2nd party has not pleaded neither adduced evidence on the point that Ist party is engaged on supervisory or managerial duties. 2nd party in its Written Statement has claimed that it is carrying Banking business is undertaking of Government of India and Chhattisgarh. The pleadings and evidence of 2nd party does not show that it is engaged in any kind of sovereign functions of the State. Apparently Banking business is carried for earning profit therefore I hold that 2nd party is covered as industry under Section 2(j) of ID Act. For above reasons, I record my finding in Point No.1 in Affirmative.

7. Point No.2- The term of reference pertains to legality of termination of service of workman and denial of regularization of his services. Parties are in dispute whether workman completed 240 days continuous service preceding termination of Ist party. Ist party workman filed affidavit of his evidence. Workman in his affidavit of evidence has stated that he was engaged as messenger cum sweeper from 1-9-97. He was continuously working with devotion. He was working for more than 8 years. He completed 240 days continuous working during each of the year. He was working till 5.30 PM. He was paid wages Rs.21.50, Rs.35 per day. His services were orally terminated on 15-5-04 without notice. He was not paid retrenchment compensation. In his cross-examination, Ist party workman says he was appointed by Branch Manager Shri G.P.Jain. Appointment letter was not received by him. He had not submitted any application for job, his name was not sponsored through Employment Exchange. He was engaged on daily wages. He claims ignorance how many post of Grade D were sanctioned. He was paid weekly wages obtaining his signatures on voucher. Vouchers were prepared in name of Branch Manager. He was not given copy of the voucher. He had preserved record about his working. It was signed by Branch Manager. In his further cross, workman says he started working from 1-9-97 Sunday was holiday. He was unable to tell his working days in 997,98 without looking to the record. The dak register of the Bank was remaining with Daftary, Raju Borkar. Work of maintaining register and vouchers was of Daftary. He had not submitted application for copies of the documents to the Bank. He was doing work of sweeper and carrying the cash, cheques for clearance etc. From evidence of Ist party, documents Exhibit W-1, 2 are admitted in evidence. Documents Exhibit W-1 are total 45 vouchers pertaining to payment of wages to messengers. Those vouchers pertain to period March 01 to May 04. However name of messenger is not mentioned on all vouchers. In Exhibit W-2, entries about payment of wages are shown from 1998, 1999 and till Feb-2000. Names of messengers, daily wage labours are not written to whom the amount was paid.

8. Management's witness Ashok Kumar Gadia filed affidavit supporting contentions of 2nd party in Written statement, however workman was not engaged as per rules, his name was not sponsored through Employment Exchange. Workman not completed 240 days working during any of the year. Workman was not working in whole

day. Workman was engaged on daily wage basis for cleaning remises, 2 hours morning and 2 hours evening. From evidence of management's witness, notifications/ circulars Exhibit M-1 to M-6 are admitted in evidence. Management's witness in his cross says he was working in the branch from 2002 to 2006. Workman worked under him for 1 ½ hours to 2 hours he was paying wages to the workman. Management's witness denies that workman was continuously working. Management's witness further says workman was working on daily wages, diary about his attendance is not produced in the case. Documents Exhibit m-1 to M-6 requires notifications regarding appointment of Driver, daily wagers on regular post. Workman in his cross says his name was not sponsored through Employment Exchange. He not submitted application to the Bank appointment letter was not issued to him.

9. Learned counsel for 2nd party Shri A.K.Shashi relies on ratio held in case between-

State of UP versus Labour Court, Haldwani and others reported in 1999 LLR-439. In above cited case, respondent No.2 was employed on daily wages on day to day basis and as such refusal to appoint him did not amount to retrenchment and as such there is no violation in nor engaging him on and from 1-9-89. The daily and casual workers who are employed in disregard of al recruitment rules, cannot be allowed to enter Government service through the backdoor.

Ratio held in the case doesnot pertain to violation of Section 25-F, termination after completion of 240 days continuous service and therefore ratio cannot be applied to case at hand.

10. Shri A.K.Shashi also relies on ratio held in case of

State of Himachal Pradesh versus Suresh Kumar Verma and other reported in 1996(2)SLR-321. Their Lordship dealing with Article 16 and 309 of the constitution held appointment on daily wage basis is not appointment to the post according to rules. The State is bound to follow the rules made by it. Selection has to be according to the recruitment rules.

Ratio held in the case doesnot pertain to termination of the daily wage worker in violation of Section 25-F of ID Act. Therefore ratio cannot be beneficially applied to present case.

Reliance is also placed in case between Bangalore Metropolitan Transport Corporation versus T.V.Anandappa reported in 2009(17)SCC-473. Ratio held in above cited case pertains to termination of services of casual labour daily wagers, temporary employees badly worker. Protection of ID Act 1947 is not available.

In above cited case, Ist party workman was not appointed as badly worker, reinstatement as badly workman was in question. Ist party was not engaged as badly workman therefore ratio cannot be applied to case at hand.

Reliance is also placed in case between Bhavnagar Municipal Corporation and others versus Jadeja Govubha Chhanubha and another reported in 2015(2)SCC(L&S) 513. Their Lordship dealing with the order of termination for non-payment of retrenchment compensation. Held that burden of proving the continuous service lies on the workman.

Even applying the ratio held to present case, evidence of workman is corroborated by documents Exhibit W-1,2. Though name of workman is not mentioned in Voucher Exhibit W-1 and entries of payment of wages in Exhibit W-2 evidence of management's witness is not explaining who other daily wage employee is engaged in Bank, to whom the amount of wages was paid under Exhibit W-1,2. In absence of such explanation, evidence of workman that he was engaged on daily wages as sweeper cum messenger corroborates his evidence. Management's witness in his cross says about attendance of Ist party diary was maintained by him. Said diary is not produced by management's witness. Rather the diary is with-held by the management's witness leads to the conclusion that if said diary is produced, claim of workman would have been supported. For the reasons discussed above, I hold that workman had cosntinuously worked more than 240 days preceding termination of his services. Termination of services of workman is illegal for violation of Section 25-F of ID Act. Therefore I record my finding in point No.2 in Negative.

11. Point No.3- In view of my finding in Point No.2 termination of services of workman is illegal, question remains for consideration whether workman is entitled for reinstatement with backwages. On above point Shri Vijay Tripathi Advocate counsel for Ist party relies on ratio held in case between

Jasmer Singh versus State of Haryana and another reported in 2015(4)SCC-458. Their Lordship dealing with violation of Section 25-F held applicant had worked for more than 240 days in establishment of respondent employer immediately preceding date of his termination. Consequently as rightly held by Labour Court termination order passed against appellant without complying with Section 25-F unsustainable. That Industrial Tribunal cum Labour Court while setting aside termination order was justified in terminating reinstatement with full backwages. Since order of termination is void ab initio, workman is entitled to full backwages. In para 22 of the judgment, their Lordship have referred to ratio held in case of Deepali Gundu.

Shri Vijay Tripathi also relies on ratio held in case between Tapash Kumar Paul versus BSNL reported in 2014(15)SCC-313. Their Lordship held illegal termination of service employee entitled to reinstatement with full back wages since in absence of full back wages, employee would be distressed and suffer punishment for no fault of his own in absence of proof of gainful employment.

12. On above point Shri A.K.Shashi relies on ratio held in case between

Jaipur Development Authority versus Ramsahai and another reported in 2006(11)SCC-684. Their Lordship held Industrial Dispute does not envisage application of its provisions where both recruitment and termination are uncertain or when the workmen are not required to be recruited in category wise service like skilled, semi skilled or unskilled etc.. Their Lordship dealing with Section 25 G held Section 25 G is not imperative in nature. For reasons to be recorded, the employ may retrench a workman other than as required by the last come first go principle. That requirement of Section 25 G,H for continuous work in terms of Section 25 B, held the same is not a requirement under section 25 G,H of ID Act. Their Lordship dealing with award of compensation held irregular appointment of daily wager or seasonal work. Nothing to show that when his services were terminated any person junior to him had been retained. Jurisdiction under Section 11-A has to be exercised judiciously. Their Lordship directed it would not be proper to direct reinstatement with backwages, instead awarded compensation Rs. 75000/-.

In case between Oshiar Prasad and other versus employers in relation to management of Sudamdih Coal Washery of BCCL, Dhanbad, Jharkhand reported in 2015(1)-LLJ-513(SC) relied by Shri A.K.Shashi. the facts of present case are not comparable looking to the nature journey of litigation in above cited case.

13. Ist party in his cross-examination says that he had not submitted application for job, appointment letter was not received by him. His name was not sponsored through Employment Exchange, Ist party workman was not engaged following the rules. No evidence is on record about any vacant post is existing, reinstatement of workman would not be appropriate. Considering the period of working of workman from 1997 to 2004, compensation Rs. 1,50,000 would be appropriate. Accordingly I record my finding in Point No.3.

14. In the result, award is passed as under:-

- (1) The action of the management in relation of Durg Rajnandgaon Gramin Bank in terminating the services of Shri Ashok Kumar Manikpuri by verbal order on 15-5-2004 is not legal.
- (2) Claim of Ist party workman pertaining to regularization would not be allowed.
- (3) Management is directed to pay compensation Rs.,1,50,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 432.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 134/03) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-12012/105/2003-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 432.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 134/03) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 20.02.2017.

[No. L-12012/105/2003-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

NO. CGIT/LC/R/134/03

Shri Sonpalsingh Koli,
S/o Shri Mohanlal Chittodia,
Village & Post Hudla, Tehsil: Mehwa,
Distt. Dousa (Rajasthan)

...Workman

Versus

Assistant General Manager,
State Bank of India,
Divisional Office, Moti Market,
Jayendraganj,
Gwalior (MP)

...Management

AWARD

Passed on this 1st day of December, 2016

1. As per letter dated 8-8-2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/105/2003-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Assistant General Manager, State Bank of India, Region-I, Gwalior in imposing the punishment of dismissal of the services of Shri Sonpal Singh S/o Shri Mohanlal Chittodia w.e.f. 21-1-2002 is justified? If not, what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 3/2 to 3/6. Case of workman is that he was initially appointed on 21-5-94 as Assistant Accountant/ Cashier. He belongs to SC community. He worked with devotion. As per order dated 29-9-99, he was suspended while he was posted in SBI Agriculture Development Branch Sabalgarh alleging that he played fraud in connection with the business of the Bank. After receiving the suspension letter, he submitted representation dated 15-10-99 denying allegations against him. Showcause notice was received by him. He misappropriated Rs.1,60,000 and taking false entry in Saving Bank Account of Shri Mangilal Gupta. He had given reply to the said notice on 27-10-99 denying the allegations against him. Chargesheet was issued to him on 31-7-00 alleging misconduct under clause 521.4j and 521.6c of Sastry Award. He given reply to the chargesheet denying charges against him. That Shri R.D.M.Tiwari was appointed as Enquiry Officer, Shri A.K.Nagar was appointed as Presenting Officer. 3 witnesses namely C.T.Sarwate Handwriting Expert, Shri O.P.Shakya, then Accountant and Shri H.W.Gokhle, Dy.Manager of the branch. That Bank had provided handwriting of 8 employees to Shri C.T.Sarvatte, handwriting expert for examination. However said handwriting expert examined handwriting of only few employees including workman. That Shri N.G.Deshpande and Shri Ramesh Verma were examined as his defence witnesses. Enquiry Officer had submitted his findings that charges against workman were not proved. Disciplinary Authority disagreed with the findings of Enquiry Officer and held that Charge No.1,2 are proved against workman.

3. 1st party workman submits that authority has failed to point out in evidence against him. Disciplinary Authority has mentioned in his finding in respect of Charge No.1 that false entries were made in TDR Register on 19-5-99. Workman was on leave on that day. it was not possible for workman to make entry in TDR Register on 19-5-99 w.r.t. Charge No.3 Workman submits that finding is contrary to the statements of the witnesses of management. Workman submits that he was not provided relevant documents during enquiry. He was not given proper opportunity for his defence. Enquiry Officer held misconduct alleged against him are not proved. Disciplinary Authority disagreeing with the findings of Enquiry Officer held him guilty w.r.t. charge No.1, 3 ignoring Exhibit DEX-10. Workman was on leave on 19-5-99. On such ground, workman prays for his reinstatement with backwages.

4. 2nd party filed Written Statement opposing claim of workman on 12-9-07. 1st party workman was initially appointed on 21-5-94. Chargesheet was issued to workman w.r.t. misconduct committed by him. Details of charge are given in para 3 of Written Statement. Enquiry was conducted strictly following principles of natural justice. Workman was given opportunity for his defence. Shri R.D.Mani Tiwari was appointed as Enquiry Officer to conduct the enquiry against the first party. It is reiterated that findings of Enquiry Officer are recorded without correctly appreciating evidence. Disciplinary Authority had disagreed with his findings. The memo was issued to workman on 7-12-2001. The reply was submitted by the workman. Disciplinary Authority considering the evidence and all aspects held Charge

No.1,3 have been proved. Showcause notice was issued to workman. The same was replied by workman on 19-1-02 considering the evidence. Disciplinary Authority imposed punishment of removal from service of workman. The appeal preferred by workman was rejected. 2nd party has denied all other adverse contentions of workman and reiterates that punishment against workman is legal.

5. As per order dated 26-11-12, enquiry conducted against workman is found proper and legal.

6. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	Not proved
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

7. The term of reference pertains to legality of punishment of dismissal imposed against workman Sonpal Singh. The enquiry conducted against workman is found legal by my predecessor as per order dated 26-11-12. The documents produced by workman Exhibit W-1 is chargesheet issued w.r.t. 1st party workman taking entries on deposit of Rs.70,000 on 11-5-99, Rs.90,000 on 19-5-99 and withdrawal of amount Rs.60,000 on 27-5-99, Rs.80,000 on 28-5-99 committing fraudulent acts and negligence in duties etc. Report of Enquiry Officer Exhibit W-4, the evidence of witnesses of the management including handwriting expert Sarvatte, management's witness Shri Shakya and statement of CSE has been discussed. Enquiry Officer at Page 3/20 recorded his findings that deposition of Shri Gokhle EPR 46 indicates that someone came to the branch for receiving a payment of withdrawal posted by him and he had interviewed him before posting the said withdrawal in the ledger sheet. As such I am left with no alternative to deduce from the corroboratory evidence of the defence representative supported by opinion reports of two like minded handwriting experts, anything otherwise. The opinion furnished by Shri Sarwate fails to hold the testimony of the facts. One more thing which deserves mention here that the difference between signatures of Ram Kumar Gupta appearing on the impugned withdrawals and those on Account opening Form Pex 10 have not been questioned at any stage in the entire episode. If it is so, there was every possibility of resemblance of standard signature of Shri Sonpal with that appearing on impugned withdrawals thereby showing his involvement in the fraud. As regards, impugned credit entries in ledger sheet of Ram Kumar Gupta the Presenting Officer has not produced any supporting evidence, mere blind adherence to the report of Shri Sarwate would prove to be major mistake. The detailed reasons are also given by Enquiry Officer while recording his finding or Charge No.2,3.

8. Exhibit W-5 Disciplinary Authority disagreed with the findings of Enquiry Officer discussed the chargesheeted employee was working on TDR desk and as per practice prevailing in the bank. During day time, the security forms STDRs were in the possession of the counter clerk. The CSE cannot assert that the TDR security forms were to be given to the counter clerk on production of passed/ received vouchers merely on the basis of laid down rules or procedures without there being any direct evidence to contradict the evidence led by the prosecution in regard to practice prevalent at the branch. It is established that CSE was working on TDR Desk at the relevant time. And the comparison of handwriting on page No. 110 of TDR book with the standard hand writing of the CSE by the undersigned reveals that there is similarity in both the handwritings. The Enquiry Officer brushed aside the Expert report submitted on behalf of the prosecution and has recorded his findings on the basis of the expert reports submitted on behalf of the CSE without recording any reason. It is settled principle of law that where several experts give the evidence expected in favour of the parties and one expert is contradicted by the other the adjudicating authority should use his power of observation and comparison and he should keep in mind all the attending circumstances before arriving at the conclusion. Opinion of any expert should not be preferred on conjectural reasons. The documentary evidence and the careful examination and observation of the disputed handwriting and the standard handwriting and the circumstances narrated herein above establish that the fictitious entries pertaining to the TDR Nos 807231 and 807232 have been made by the CSE therefore I tend to disagree with the findings of the Enquiry Officer who held the allegation and charge as not proved. In view of the foregoing, I hold the allegation and charge as proved. Disciplinary Authority has also recorded his reasons with regard to Charge No.3.

9. Proceedings of Enquiry and documents before Enquiry Officer are not produced in this case. The original TDS and entries taken in the register are also not produced by the management. Despite repeated time granted, Enquiry

Proceedings and documents are not produced. Learned counsel for management Shri Ashish Shrotri emphasized that the evidence in Enquiry Proceedings is not disputed by 1st party workman therefore the evidence discussed in Enquiry Report and in note by Disciplinary Authority would be relied for deciding whether the Charge No.1 & 3 are proved. I am not impressed with above argument. When Enquiry Proceeding and documents are not produced by 2nd party, it is a case of no evidence. Disciplinary Authority has compared signatures of CSE with admitted signatures which are not available on record. I have no opportunity to go through the signatures either admitted or disputed, opinion of handwriting experts are not available. As such no evidence is available on record for deciding whether Charge No. 1,3 alleged against workman are proved or not.

10. Shri Ashish Shrotri relies on ratio held in case between-

West Bokaro Colliery (TISCO LTD) versus Ram Pravesh Singh reported in 2008(3)SCC-729. Their Lordship dealing with Section 11-A of ID Act held where two views are possible on evidence, Industrial Court should be very slow in interfering with the findings arrived at in domestic enquiry. Standard of proof in domestic enquiry is preponderance of probabilities and not proof beyond reasonable doubt.

Reliance is also placed in case between UP State Road Transport Corporation versus Vinod Kumar reported in 2008(1)SCC-115. Their Lordship dealing with Section 11-A of ID Act held where a workman removed from service had challenged only the conclusions reached by the enquiry officer and the quantum of punishment but not the legality or fairness of the enquiry proceedings held Labour court could not examine the findings of the enquiry officer and hold that the charge was not proved.

1st party workman had pleaded that on 19-5-94, he was on leave, how he could take entries in the register. Above ratio held in the case cannot be applied to case at hand as record of Enquiry Proceedings and documents are not produced.

Shri Ashish Shrotri also relied on ratio held in case between Lalit Popli versus Canara Bank and others reported in 2003(3)SCC-583. Their Lordship held irrespective of an opinion of the handwriting expert, the court can compare the admitted writing with the disputed writing and come to its conclusion. On the basis of such comparison since the authorities were satisfied about the guilt of the employee, who also had himself admitted some lapse on his part having regard to the nature of work of the employee which demands vigilance and care, High Court was justified in upholding dismissal of the employee. Their Lordship held evidence of the handwriting expert need not be invariably corroborated. Their Lordship held what is necessary to see is if the report relied upon suffers from any infirmity or not.

In present case, management's witness Sarvatte was examined on behalf of management, Mr. Deshpande and Verma handwriting experts were examined on behalf of workman. Enquiry Proceedings is not produced. Ratio cannot be applied to case at hand. In absence of such documents and record, it is not possible to record findings whether the Charge No.1,3 alleged against workman are proved from evidence in Enquiry Proceedings, why the record of Enquiry Proceedings and documents are not produced in the case is a matter to be considered by the management itself.

11. Shri Praveen Yadav, Advocate for workman relies on ratio held in case of Transport Commissioner, Madras versus A.Radhakrishna Moorthy reported in 1995(1)SCC-332, Magan Bihari Lal versus State of Punjab reported in 1977(2)SCC-210, Union of India and others versus Gyanchand Chattar reported in 2009(12)SCC-78, Saqlain Ahmad versus Emperor reported in AIR-1936-Allahabad 165 & Roop Singh Negi versus Punjab National Bank reported in 2009(2)SCC-570.

As the record of Enquiry Proceedings and documents are not produced, detailed discussion of ratio held in all those cases is not required. For absence of Enquiry Proceedings and documents, I record my finding in Point No.1 in Negative.

12. Point No.2- In view of my finding in Point No.1 misconduct alleged/ charge No.1 & 3 alleged against workman are not proved. Workman in his evidence has stated that he is unemployed since his dismissal from service is not shattered. Punishment of dismissal imposed against workman is illegal and deserves to be set-aside. Accordingly I record my finding in Point No.2.

13. In the result, award is passed as under:-

- (1) The action of the management imposing the punishment of dismissal of the services of Shri Sonpal Singh S/o Shri Mohanlal Chittodia w.e.f. 21-1-2002 is illegal.
- (2) Dismissal of 1st party workman is quashed and set-aside. 2nd party is directed to reinstate workman with continuity of service and full backwages.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 433.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार क्षेत्रीय ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 22/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-12012/80/2006-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 433.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Kshetriya Gramin Bank and their workmen, received by the Central Government on 20.02.2017.

[No. L-12012/80/2006-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/22/2007

Shri Anil Agrawal S/o Sitaram Agrawal,
R/o shivpur, Tehsil Sivnimalva,
Distt. Hoshangabad (MP)

...Workman

Versus

The Chairman,
Kshetriya Gramin Bank,
Head Office, Mangalwara,
Hoshangabad (MP)

...Management

AWARD

Passed on this 7th day of December 2016

1. As per letter dated 25-1-07 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/80/2006-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Chairman, Kshetriya Gramin Bank, Hoshangabad in terminating the services of Shri Anil Agrawal S/o Sitaram Agrawal as Authorised collection Agent w.e.f. 14-2-2004 is legal and justified? If not, too what relief the concerned workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 6/1 to 6/3. Case of Ist party workman is that on 21-8-00, he applied to Chairman of 2nd party Bank to work as Deposit Collector. He was appointed as Deposit Collector4 vide order dated 12-9-2010. He deposited amount of Rs. 10,000 . he deposited amount of Rs.10,000 towards security. Since date of his appointment, he was sincerely working. He had made number of deposits. There was no complaint by depositors or officers against him. He was terminated on 13-2-04. He rendered service more than 4 years in the Bank never told him regarding losses in deposit scheme. Bank was giving 1.5 % to depositors, 2 % commission to deposit collector. Bank used to give loan charging interest 12 to 14 %. Bank did not suffer any loss under the scheme. Rather the Bank was running scheme earning profits. For vested interest, Bank stopped scheme without proper reasons. On 3-2-04, Branch Manager Hoshangabad given him letter to stop his work. Non-applicant No.1 also informed all deposit collectors by publication in newspaper about their working. That Ist party workman is rendered jobless. After termination of his service, workman suffered financial crisis. He is rendered jobless. That his services were terminated without issuing one month's notice or giving proper opportunity of hearing. Ist party workman submits that he is entitled to reinstatement under Employment Standing

Orders. That he rendered service as Deposit collector for more than 4 years. He acquired status of permanent workman in the department. Workman has referred to certain judgments of Apex Court and claims he is covered as workman. His services are terminated without notice or giving opportunity for hearing is illegal. On such ground, workman prays for his reinstatement and Rs.10,000 per month towards loss suffered by him.

3. 2nd party filed Written Statement opposing claim of workman. 2nd party submits that KG Bank Hoshangabad was Regional Rural Bank constituted under Section 6 of Regional Rural Bank 1976. It was sponsored by Central Bank of India vide Notification dated 1-6-06. 2nd party Bank was amalgamated as Satpura Kshetriya Gramin Bank, Hoshangabad is not in existence therefore reference is not tenable. 2nd party Bank had floated Mini Deposit collection scheme known as Gramin Mini Deposit Scheme. The object of the scheme was collection of small amount from the persons desirous of making daily deposits in the Bank. For purpose of collecting amount, management needed persons appointed as agents on purely temporary basis. That 1st party workman and others were appointed as agents under the scheme. The agents were entitled to 2 % of total collection made by them in each of the month as commission. Bank was paying commission to the deposit collectors. The scheme was floated during 1986 to 2000 in 5 branches of the Bank out of 18 branches. The scheme was reviewed and found not mechanically viable for various reasons. When scheme was floated, rate of interest was 13 % per annum on term deposits and 5 % on Saving Bank Account. When review was done, interest had come down to 5.5% on term deposit, 3.5 % on Saving Bank Account. Cost of implementing scheme at its instruction as 8 %, presently cost of implementing was 6.5% plus operating expenses. Bank had to pay 2 % commission to daily deposit collectors interest 3 % per annum to depositor in addition to operating cost of the scheme. The scheme was found not mechanically viable. Bank therefore constrained to close the scheme in all the branches.

4. 2nd party further submits that appointment of 1st party was as Commission Agent on contractual basis. 1st party was not in regular employment of the Bank. He was paid commission on the basis of collection made by him deposited in the Bank. Policy decision as taken to close scheme. The claim of 1st party for compensation with arrears from 13-2-04 is not valid. 2nd party reiterates that as scheme was not financially viable, it was closed. After decision of the Board of Directors in meeting dated 9-3-04. All commission agents including workmen were terminated. Termination of workman was not by way of punishment. Showcause notice was not required. Engagement of 1st party was contractual and covered under Section 2(oo)(bb) of ID Act. Non-engagement of 1st party workman after closure of the scheme is not amount of retrenchment but same is covered under Section 2(oo)(bb) of ID Act. It is submitted that 1st party is not entitled to any relief.

5. 1st party workman filed rejoinder reiterating his contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Chairman, Kshetriya Gramin Bank, Hoshangabad in terminating the services of Shri Anil Agrawal S/o Sitaram Agrawal as Authorised collection Agent w.e.f. 14-2-2004 is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

7. Point No.1- The term of reference pertains to termination of services of workman. 1st party workman in his statement of claim has contented that he was continuously working as cum agent, his services are terminated without notice. Termination of his service is illegal.

8. Workman filed affidavit of his evidence. He has stated that he was appointed as deposit collector by Chairman of Bank on 21-8-00. He deposited amount of Rs.1000/- towards security. He was working as Deposit Collector under Gramin Bank Small Deposit Scheme. Depositor was paid interest 3.5 %, he was paid 2 % commission on amount collected and deposited by him. On 1-6-03, Bank reduced interest from 3 % to 1.5 %. Bank was charging interest 12 to 14 % per annum on loan advanced by it. His services were terminated by 2nd party as per public notice dated 14-2-04 without any notice. His affidavit also refers to judgment by Apex Court in Appeal No. 3355/98, reinstatement was allowed to the employees. In his cross, workman admits settlement M-2 in September 2000. He admits payments of commission as per the agreement. He came to know about closure of scheme from notice in newspaper. He not received letter dated 13-2-04 from Branch Manager. He produced documents relating to Narotam Chourey, Anil

Agrawal still working in Bank. He denies that at the time of closure of scheme, he was served with notice or paid retrenchment compensation. He claims ignorance whether the agreement with the Bank provides for termination without notice. He admits to have signed on Exhibit M-2 knowing the contents.

9. Management's witness Shri Sunil Shrivastava filed affidavit of evidence supporting contentions in Written Statement filed by management. That management floated Mini Deposit Collection Scheme for collection of small amount from persons desiring to make deposits in Bank. For collecting amount, management needed persons appointed as agents on contract basis. The agreement was entered with 1st party. 1st party was entitled to 2 % commission on amount collected by him. Out of 18, scheme was floated only in 15 branches. When scheme was floated, rate of interest⁶ was 13 % per annum on term deposits and 5 % on Saving Bank account. When review was made, interest came down to 5.5 % on term deposit and 3.5 % on Saving Bank. The cost of implementing the scheme at its inception was 8 %. At time of closure, it was 6.5 %. Workman is not entitled to compensation or arrears. After review, Bank had closed the scheme as it was not financially viable. In his cross examination, witness says 1st party Anil Agrawal was appointed as Collection Agent on 12-9-2000. Bank discontinued Saving scheme from 12-2-04. During service period of workman, any irregularity was not found on part of workman. Except Paper publication Exhibit W-1, workman was not given other intimation. Management's witness denies that 1st party workman was doing some other work besides work of Commission Agent. In meeting dated 9-3-04, matter was discussed that the image of Bank was harmed. In said meeting, complaint was received that Bachhanlal Agrawal committed certain irregularities in Saving Scheme. Complaints were also received about working of branches at Sivala, Piparia and working of commission agents. Management's witness admits before termination of services of Shri Anil Agrawal, notice was not served, his explanation was not called, retrenchment compensation was not paid to him.

10. The legal position w.r.t. commission agent is clear that commission agent, deposit collector of Banks although not regular employees are workmen under Section 2(s) of ID Act.

11. Evidence of 1st party workman that he was continuously working as deposit collector from 21-8-00 till termination of his services 14-2-04 is not shattered in his cross-examination. 1st party workman produced Exhibit W-1 public notice in newspaper about closing the deposit scheme. Appointment of 1st party workman as Commission Agent is not disputed. Evidence on record is cogent about 1st party workman continuously working till his termination. Management produced documents Exhibit M-1 Circular dated 26-11-97 appointment of agent was for period of 12 months. Commission Agent was entitled to 2 % commission at end of the month. Exhibit M-2 is the letter of appointment of 1st party workman dated 21-8-00 also provides payment of 2 % commission and depositing security amount Rs.10,000/- . The period of appointment is not specifically mentioned. The contentions of management that workman was engaged on contract basis and his disengagement is covered under Section 2(oo)(bb) of ID Act is not supported from contents of Exhibit M-2. 1st party workman is covered as workman and his services are terminated without notice, in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No. in Negative.

12. Point No.2- In view of my finding in Point No.1 termination of 1st party workman as Commission Agent is illegal for violation of Section 25-F of ID act, question remains for decision is whether 1st party is entitled for reinstatement with backwages and compensation Rs. 10,000 per month.

13. Learned counsel for 2nd party Shri Pranay Choubey submitted written notes of argument and referred to ratio held in case between Delhi Development Horticulture Employees Union and Surendra Kumar Sharma versus Vikas Adhikari and another pertains to Jawahar Rozgar Yojna, a Government Scheme. When scheme is closed, benefit of regularization cannot be allowed only on ground of completion of 240 days continuous service. Any of the ratio referred in the notes of argument does not pertain to violation of Section 25-F of ID Act. Evidence on record shows deposit scheme is closed by Bank as it was not viable. 1st party workman was working as commission agent for about 4 years, he was not paid retrenchment compensation. When scheme is closed by the Bank, claim of 1st party for reinstatement cannot be allowed. Considering 4 years working period of workman, compensation Rs.60,000/- would be appropriate. Accordingly I record my finding in Point No.2.

14. In the result, award is passed as under:-

- (1) The action of the management of Chairman, Kshetriya Gramin Bank, Hoshangabad in terminating the services of Shri Anil Agrawal S/o Sitaram Agrawal as Authorised collection Agent w.e.f. 14-2-2004 is not proper and legal.
- (2) 2nd party is directed to pay compensation Rs. 60,000/- to the workman Shri Anil Agrawal.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 434.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देवास शाहजहांपुर क्षेत्रीय ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 28/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-12012/222/2002-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 434.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Dewas Shajapur Kshetriya Gramin Bank and their workmen, received by the Central Government on 20.02.2017.

[No. L-12012/222/2002-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/28/2003

Shri Ganesh Verma,
S/o Shri Bholaramji, 42,
Government Colony, Birlagram,
Vill Nagda, Ujjain

...Workman

Versus

The Chairman,
Dewas Shajapur Kshetriya Gramin Bank,
Head office, Madan Mansion, Station Road,
Dewas (MP)

...Management

AWARD

Passed on this 9th day of December 2016

1. As per letter dated 24-31/12/2002 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/222/2002-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Chairman, Dewas Shajapur Kshetriya Gramin Bank in imposing the punishment of dismissing the services of Shri Ganesh Verma S/o Bholaramji w.e.f. 21-7-2001 is justified? If not, to what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim. Case of workman is that he was appointed as clerk cum cashier on 18-5-91. He passed HSc. Chargesheet was issued to him on 20-8-00. He submitted reply to chargesheet on 13-9-00. Mr. A.L.Chawda was appointed as Enquiry Officer. After report of Enquiry Officer, he was dismissed from service on 21-7-01. Appeal preferred by him was rejected on 1-10-01. Ist party received its intimation on 6-10-01. Ist party contends that he was not supplied documents as per application dated 10-11-00. He was allowed Defence assistant but no body was ready to work as his defence Assistant. His request for engaging Advocate was not allowed. Consequently workman could not properly defend him in Enquiry Proceedings. On his application dated 13-9-00, copies of preliminary enquiry were not supplied to him on his oral request, Mohanlal Tellor was not examined as his Defence witness. Statement of witnesses were contradictory. Enquiry Officer did not consider contradictions in their evidence. List of witnesses was not supplied to him. The misconduct alleged against him was of criminal nature. However management did not submit report for criminal action. The findings of enquiry Officer are distorted. He is made scape goat. Branch Manager shri O.P.Rajvarde was involved in

more serious allegations. He was imposed punishment of withholding 5 increments. Punishment imposed against workman is harsh and discriminatory. After 3 months of his suspension, he was not paid half pay towards subsistence allowance. He was not paid arrears of 7th pay scale, showcause notice was not issued to him. Enquiry conducted against him is in violation of principles of natural justice. On such ground, workman prays for his reinstatement with backwages setting aside order of his dismissal.

3. 2nd party filed written Statement opposing claim of workman at Pages 4/1 to 4/4. According to 2nd party, 1st party was appointed as clerk-cum-cashier in Ranayal branch of the Dewas Shajapur Kshetriya Gramin bank. 1st party was involved in misappropriation of Bank's money by fraudulent means during Feb to June 2000. In DE, 1st party was found guilty. 2nd party given further details that while working as clerk-cum-cashier, 1st party was served with chargesheet for violation of rule 16,17,19 & 13(1). 1st party had received amount of Rs.1,50,000 from Renial branch on 15-5-00 for depositing in astha branch of the Bank in current account. 1st party deposited only rs.1,40,000 and fraudulently misappropriated Rs.10,000/-. 1st party received money from customers and didnot deposit amount of Rs.43,750 in Bank on 19-2-2000, Gopal Singh deposited Rs.45000 with 1st Party. Said amount was fraudulently kept by workman. Said amount was deposited in customers Saving Bank Account No. 14 on 27-4-00. Reply of workman was called vide letter dated 6-10-00. Shri A.L.chawda was appointed as enquiry Officer, Manoj Verma as Presenting Officer. Enquiry was held on 15-11-00, 4-12-00, 17-2-01, 19-3-01. Workman was allowed opportunity for his defence. 12 management's witnesses examined were cross-examined by the workman. Documents were supplied to him. Both sides submitted briefs. Enquiry was conducted properly. After report of Enquiry Officer, personal hearing was allowed to workman. Punishment of dismissal was imposed on 21-7-01.

4. 2nd party reiterates that enquiry was properly conducted giving opportunity for defence of workman. Workman doesnot deserve any relief. 2nd party denies that workman as denied defence counsel. No such request was made by him. Workman did not produce witnesses despite several opportunities allowed by Enquiry Officer. Workman was not discriminated by the management. The allegations are baseless.

5. As per order dated 18-12-2015, enquiry conducted against workman is found legal. Workman has failed to adduce evidence.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

7. Enquiry conducted against workman is found legal, question whether misconduct alleged against workman is proved needs to be decided considering evidence in enquiry proceedings. From evidence of management's witness documents of enquiry Exhibit M-1 to 24 are admitted. Exhibit M-1 is order of suspension of 1st party workman. Exhibit M-3 is letter given by Branch Manager that entry of depositing Rs.25000 is recorded in saving account of Mr. Hemraj but its entry was not appearing in the day book. Entry of deposit of Rs.25000 in account of Kumer Singh. Entry of deposit of Rs.5000 in account of Devkaran Ramprasad were recorded in Saving account 1107315 but its entries were not taken in day book. Entry of Rs.1500 was taken in respect of the Account 315 as overdraft. As per document Exhibit M-4, the balance amount rs.36,704.14 was returned. As per Bank record, balance amount should have been Rs. 46702. There was difference of Rs.10,000. In Exhibit M-6, details of amount misappropriated from Accounts of 10 customers is shown rs.53750. Exhibit M-7 is chargesheet. Exhibit M-8 is reply given to the chargesheet. Exhibit M-9,10 are orders of appointing Enquiry Officer, Presenting Officer.

8. Management examined 12 witnesses in enquiry proceedings. Management's witness MW-1 P.K.Takjharia in his statement says amount of Rs.1,50,000 was paid under debit voucher to the cashier. Only amount rs.1,40,000 was deposited. The signatures on deposit receipt appears of the cashier. In document No.3, balance amount is shown rs.1,36,704.14 on 26-5-00. The witness as per pass book, amount should have been Rs.1,46,704/-. There was difference of Rs.10,000/-. The cross-examination of MW-1 is devoted about the entries in the accounts of Hemraj, Mangilal,

Kumer Singh, Jagannath, Devkaran, Ramprasad, Ramesh Chandra, Bulakilal, Ranjit Singh, Ramprasad Bhagirath, Devkaran Bhavani Singh, Bhagirath Gopal Singh Khati. The entries were not taken. Statements of Gopal Singh MW-2, Ramprasad MW-3, Devkaran Khati MW-4, Devkaran Bhavani- MW-5, Bhagirath Bonda MW-6, Hemraj singh MW-7, Ramesh Chand S/o Ramnath Singh MW-8, Anokhelal MW-9, Balkilal MW-10, Jagannath S/o Mohabat singh MW-11 are recorded. All of them were cross-examined by workman. MW-2 to 11 have confirmed their statements and admitted their signatures. All the witnesses have narrated about the amount deposited. Statement of workman was also recorded. In his cross-examination, workman was asked about deposit of amount Rs.1,50,000 signed by him. Workman explained that he had explained the matter in document No.1 Page 7. In his further cross, workman has claimed that he had not received the amount. The documents are produced in record of enquiry. Copy of attendance register is produced in enquiry. Copy of enquiry Report exhibit M-16 is produced. Enquiry Officer has discussed the evidence in detail for the findings recorded by him. The scope of judicial review is limited. Evidence cannot be re-appreciated. Evidence in enquiry Proceedings supports the findings of Enquiry Officer. Misconduct alleged against workman is proved from evidence in enquiry proceedings. For above reasons, I record my finding in point No.1 in Affirmative.

9. Point No.2- In view of my finding in point No.1 charge/misconduct alleged against workman are proved from evidence in enquiry Proceedings, questions remains for consideration is whether punishment of dismissal imposed against workman is proper and legal. The proved misconduct against workman pertains to misappropriation of amount handed over to him to deposit entire amount and amounts received by workman from customers, entries were taken in day book. Learned counsel for 2nd party Shri A.K. Shashi relies on ratio held in case between-

State Bank of Patiala and others versus S.K.Sharma reported in 1996-3-SCC-364. Their Lordship dealing with principles of natural justice and judicial review held the substantive provisions had normally to be complied with. Provision which is not of substantial or mandatory character, if no prejudice is caused to the person proceeded against no interference of court called for. Substantial compliance with such provision enough. Even in case of mandatory procedural provision, if it is in the interest of the person proceeded against and not in public interest and if such person waived the requirements thereof then also non-compliance with such requirements would not vitiate the action.

As the enquiry conducted against workman is already found legal, ratio held in the case cannot be applied to this case. Their Lordship following judgment in case between Managing Director ECIL versus B.Karunakar reported in 1993(4)SCC-727 have observed Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end.

In present case from evidence in Enquiry Proceedings, the charges against workman are proved. The proved misconduct is of serious nature of misappropriation of Bank money and amount deposited by customers, the punishment of dismissal against workman cannot be said shockingly disproportionate. No interference is justified. For above reasons, I record my finding in Point No.2 in Affirmative.

10. In the result, award is passed as under:-

- (1) The action of the management of Chairman, Dewas Shajapur Kshetriya Gramin Bank in imposing the punishment of dismissing the services of Shri Ganesh Verma S/o Bholaramji w.e.f. 21-7-2001 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 435.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बड़ौदा राजस्थान क्षेत्रीय ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 66/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-12011/38/2015-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 435.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 66/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of Baroda Rajasthan Kshetriya Gramin Bank and their workmen, received by the Central Government on 20.02.2017.

[No. L-12011/38/2015-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 66/2015

Reference No. L-12011/38/2015-IR(B-I) dated: 15.7.2015

The Secretary
Grameen Bank Officers Organization
& Grameen Bank employees Union,
B-124, Sethi Colony, Jaipur.

V/s

The Regional manager
Baroda Rajasthan Kshetriya Grameen Bank, regional Office, Kalash Tower,
13-Lajpat Nagar, Alwar.

AWARD

23.9.2016

1. The Central Government in exercise of the powers conferred under clause (d) of Sub-Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“क्या प्रबंधन बडौदा राजस्थान क्षेत्रीय ग्रामीण बैंक, क्षेत्रीय कार्यालय, अलवर के द्वारा यूनियन के सचिव श्री पंकज त्रिपाठी का विशेष भत्ता रु 780/- से घटाकर रु 500/- किया जाना न्यायोचित एवं न्यायसंगत है? यदि नहीं तो कर्मकार किस अनुतोष को पाने का अधिकारी है?”

2. Pursuant to the receipt of the reference order, registered notices were issued to the parties as per the order of the tribunal fixing 28.9.2015 for filing statement of claim. On 28.9.2015 learned representative of both the parties appeared & authority was filed from both the side which was taken on record. It was requested by learned representative for applicant to adjourn the case. Adjournment was granted fixing 9.11.2015 for filing statement of claim. On 9.11.2015 none appeared on behalf of applicant. Learned representative for opposite party appeared. Case was adjourned by tribunal fixing 11.1.2016 for filing statement of claim.

3. On 11.1.2016 none appeared from both the side. Last opportunity was again extended to the applicant fixing 4.2.2016 for filing statement of claim & case was adjourned. On 4.2.2016 Sh. Rajendra Gupta, learned advocate, appeared for Sh. Pankaj Tripathi & requested for adjourning the case. Learned representative for opposite party Sh. Surendra Singh (Nalot) appeared for opposite party. Case was adjourned fixing 21.3.2016 for filing statement of claim by applicant. On 21.3.2016 learned representative of both the parties appeared. Applicant side requested to adjourn the case & requested further time to file statement of claim which was granted fixing 16.5.2016 for filing statement of claim.

4. On 16.5.2016 neither any one appeared on behalf of applicant nor statement of claim was filed. Sh. Siyaram Chaudhary, Advocate appeared on behalf of learned representative for opposite party & alleged that learned representative of opposite party will not come in appearance today because of sickness of some elderly person at his home. Case was adjourned by tribunal on its own motion providing further opportunity to the applicant fixing 16.6.2016 for filing statement of claim.

5. On 16.6.2016 learned representative for applicant appeared & requested for time to file statement of claim. None appeared on behalf of opposite party. Allowing the adjournment for time to file statement of claim 31.8.2016 was next date fixed for filing statement of claim. On 31.8.2016 neither anyone appeared nor statement of claim was filed on

behalf of applicant. Learned representative for opposite party was present on behalf of opposite party. Looking into the fact that despite providing numerous opportunities applicant is not filing statement of claim, adjourning the case by the tribunal on its own motion 21.9.2016 was fixed for filing statement of claim providing last opportunity to the applicant.

6. On 21.9.2016 none appeared on behalf of applicant. Learned representative on behalf of opposite party appeared. It was observed by tribunal that it appears that applicant is not interested in filing statement of claim as he has been provided continuous opportunity for filing claim since 28.9.2015 but claim has not been filed till date hence, further proceeding was closed & case was reserved for award.

7. It is pertinent to note that reference order dated 15.7.2015 was sent by Ministry to applicant with direction to file statement of claim within 15 days from the date of receipt of reference. Applicant has neither filed statement of claim on the direction of Ministry nor on notice & knowledge of the proceeding pending before the tribunal. It appears that applicant is not interested & willing in submitting the claim for adjudication. In the circumstances & in the absence of material evidence brought on record, tribunal is unable to record the finding on merit on the issue referred to it. Accordingly, “No Claim Award” is passed against the reference under adjudication. The reference under adjudication is answered accordingly.

8. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 436.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 42/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/13/2015-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 436.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of North Western Railway and their workmen, received by the Central Government on 20.02.2017.

[No. L-41012/13/2015-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 42/2015

Reference No. L-41012/13/2015-IR(B-I) dated: 20.4.2015

Shri Mansingh
S/o Shri Sunder Singh
Near Railway Hospital
Isai (Christian) Mohalla,
Ajmer (Rajasthan).

V/s

The Dy. Chief Electrical Engineer(Carriage)
North Western Railway
Carriage Office, Ajmer (Rajasthan)

AWARD

26.8.2016

1. The Central Government in exercise of the powers conferred under clause (d) of Sub-Section 1 & 2 (A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“क्या प्रबंधन उप मुख्य यांत्रिकी अभियंता (कैरिज), उत्तर पश्चिम रेलवे, अजमेर (राज०) द्वारा श्री मानसिंह पुत्र श्री सुन्दर सिंह को दिनांक 18.11.1986 से सेवा से निष्कासित करने की कार्यवाही बैद्यानिक एवं न्यायसंगत है? यदि नहीं तो प्रार्थी किस राहत का और कब से पाने का हकदार है?”

2. Pursuant to the receipt of the reference order, registered notices were issued to the parties as per the order of the tribunal fixing 23.9.2015 for filing statement of claim.

3. On 23.9.2015 authority of representation was filed on behalf of opposite party. Learned representative on behalf of applicant came in appearance but neither authority was filed nor statement of claim was filed. In the interest of justice case was adjourned fixing 5.10.2015 for filing statement of claim. On 5.10.2015 none appeared on behalf of applicant. Learned representative of opposite party came in appearance. Presiding Officer was on leave. 26.11.2015 was next date fixed for filing statement of claim. On 26.11.2015 learned representative of applicant appeared & none appeared on behalf of opposite party. Oral adjournment was granted in favour of applicant fixing 4.1.2016 for filing statement of claim. After order learned representative of opposite party appeared who was intimated about next date 4.1.2016 fix for filing statement of claim.

4. On 4.1.2016 learned representative for both the parties appeared. Presiding Officer was on leave. Oral adjournment was granted in favour of applicant fixing 14.3.2016 for filing statement of claim. On 14.3.2016 learned representative of both the parties were present. Oral adjournment was granted in favour of applicant fixing 2.5.2016 for filing statement of claim. On 2.5.2016 learned representative for applicant appeared & requested further time for filing statement of claim. None appeared on behalf of opposite party. Oral adjournment was granted in favour of applicant & direction was given to the applicant to file statement of claim & authority of his learned representative fixing 25.7.2016 for filing statement of claim.

5. On 25.7.2016 learned representative on behalf of applicant appeared & alleged that statement of claim will be submitted on the next date. None appeared on behalf of opposite party. Adjourning the case on 25.7.2016 next date 24.8.2016 was fixed with last opportunity for filing statement of claim. On 24.8.2016 applicant was absent. Learned representative on behalf of parties came in appearance. Neither authority of learned representative on behalf of applicant nor statement of claim was filed. It was observed looking into past order-sheets of the case that applicant was personally served for 23.9.2015 but till date he neither appeared in person nor filed statement of claim or authority of his learned representative. Applicant was also provided last opportunity for filing statement of claim but he did not respond to the directions given on various dates. Accordingly, further proceeding in the case was closed & case was reserved for award.

6. It is pertinent to note that reference order dated 20.4.2015 was sent by Ministry to applicant with direction to file statement of claim within 15 days from the date of receipt of reference. Applicant has neither filed statement of claim on the direction of Ministry nor on notice & knowledge of the proceeding pending before the tribunal. It appears that applicant is not interested & willing in submitting the claim for adjudication. In absence of statement of claim & material evidence brought on record, tribunal is unable to record the finding on the issues referred to it on merit. Accordingly, “No Claim Award” is passed in this matter. The reference under adjudication is answered accordingly.

7. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 437.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 17/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/86/2006-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 437.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of North Western Railway and their workmen, received by the Central Government on 20.02.2017.

[No. L-41012/86/2006-IR (B-I)]

B. S. BISHT, Section Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 17 / 2007

भरत पाण्डेय, पीठासीन अधिकारी

रेफरेन्स नं. L- 41012/86/2006-IR(B-1) दिनांक 5.02.2007

नरेन्द्रसिंह भूतपूर्व हेल्पर खलासी,
टिकट नम्बर 30168 / 26,
कैरिज कारखाना उ. प. रेलवे, अजमेर
एवं निवासी मकान संख्या 272 / 27,
अवधपुरी जौन्सगंज
अजमेर – (राजस्थान)

बनाम

1. भारत संघ द्वारा महाप्रबन्धक, उ.प. रेलवे, जयपुर।
2. श्रीमान उप मुख्य यांत्रिक अभियन्ता (कैरिज),
कैरिज कारखाना उ. प. रेलवे, अजमेर।
3. श्रीमान सहायक कारखाना प्रबंधक (आई),
कैरिज कारखाना उ. प. रेलवे, अजमेर

प्रार्थी की तरफ से : श्री कुलदीप असवाल – एडवोकेट

अप्रार्थी की तरफ से : श्री पूर्णद्व शर्मा – एडवोकेट

: पंचाट :

दिनांक : 30.11.2016

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 10 उपधारा 1 खण्ड (घ) के अन्तर्गत दिनांक 5.02.2007 के आदेश से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णयन हेतु संस्थित है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् हैः
2. "क्या उप मुख्य यांत्रिक अभियन्ता (कैरिज), उत्तर पश्चिम रेलवे, अजमेर के द्वारा अपने कर्मकार श्री नरेन्द्र सिंह, भूतपूर्व हेल्पर खलासी को दिनांक 18.8.2003 से सेवा से बर्खास्त करना न्यायोचित एवं विधि सम्मत है? यदि नहीं तो कर्मकार अपने नियोजक से किस राहत को पाने का अधिकारी है?"
3. स्टेटमेन्ट ऑफ क्लेम में दिये गये तथ्यों के अनुसार संक्षिप्ततः प्रार्थी श्रमिक का कथन है कि प्रार्थी अप्रार्थीगण के अधीन टिकट नम्बर 30168 / 26, हेल्पर खलासी, के पद पर कैरिज कारखाना अजमेर में नियमित सेवा में था जिसे अप्रार्थी संख्या 3 ने अपने दण्डादेश संख्या सीई 308 / 2002 / 5 / 28 दिनांक 18.8.2003 के जरिये रेल सेवा से निष्कासित कर दिया। प्रार्थी विष्की के नियोजन में खलासी पद पर दिनांक 22.10.1980 को नियुक्त हुआ था।
4. अप्रार्थी संख्या 3 ने प्रार्थी को उसके विरुद्ध विभागीय जांच संख्या अप्रार्थी संख्या सीई 308 / 2002 / 5 / 28 के सम्बन्ध में अपने प्रतिनिधि का नाम तथा लिखित सहमति प्रस्तुत करने हेतु पत्र प्रस्तुत किया जिस पर प्रार्थी ने अप्रार्थी संख्या 3 को उसके विरुद्ध प्रस्तावित विभागीय जांच का आरोप पत्र देने की मांग करते हुए दिनांक 31.3.2003 को अपने प्रतिनिधि श्री के एन भार्गव का नाम तथा उनकी लिखित सहमति प्रार्थी के प्रतिनिधित्व हेतु प्रस्तुत कर दी थी।
5. तदुउपरान्त अप्रार्थीगण ने प्रार्थी को उक्त विभागीय जांच के सम्बन्ध में कोई आरोपपत्र की प्रति प्रदत्त नहीं की जिस कारण प्रार्थी उक्त विभागीय जांच में अपना बचाव करने में असमर्थ रहा।

6. प्रार्थी को उक्त कथित विभागीय जांच वर्ष 2002-03 में सनबर्न, सूजन तथा खुजली एलर्जी के रोग से गंभीर रूप से पीड़ित होने के कारण उक्त कालावधि में अवैतनिक अवकाश में रहना पड़ा जिसकी सूचना भी समय-समय पर प्रार्थी ने अप्रार्थी संख्या 3 को प्रेषित कर दी थी।

7. अप्रार्थी संख्या 3 ने जो उक्त विभागीय जांच में अनुशासनिक अधिकारी था प्रार्थी से प्रिज्यूडिस एवं बायज्ड होकर प्रार्थी को उक्त विभागीय जांच में बचाव का युक्तियुक्त अवसर प्रदान नहीं किया तथा उक्त विभागीय जांच गुप्त रूप से जल्दबाजी में पूरी कर ली। इसी कारण अप्रार्थी संख्या 3 ने प्रार्थी को उक्त विभागीय जांच में उपस्थित होने हेतु सूचना हेतु सम्यक प्रयास नहीं किये, यहां तक कि जांच में उपस्थित होने हेतु उक्त सूचना कारखाना के सूचना पट्ट पर भी नहीं लगाई गई और प्रार्थी को उसके विरुद्ध उक्त जांच में की गई कार्यवाही से अवगत नहीं कराया गया, इस प्रकार प्रार्थी को उक्त जांच में अपना बचाव करने हेतु युक्तियुक्त अवसर प्रदान नहीं किया गया।

8. अप्रार्थी संख्या 3 ने प्रार्थी को विद्वेष पूर्वक उक्त विभागीय जांच में जांच अधिकारी नियुक्त किये जाने बाबत भी कोई सूचना नहीं दी, इस प्रकार उक्त विभागीय जांच में जांच अधिकारी द्वारा की गई कार्यवाही गलत और अपने मनमाने तौर पर की गई जो गलत दोषपूर्ण एवं अवैधानिक है।

9. अप्रार्थी संख्या 3 ने पत्र संख्या सीई 308/2002/5/28 दिनांक 23.6.2003 के जरिये प्रार्थी को उक्त विभागीय जांच में जांच अधिकारी की जांच रिपोर्ट की प्रति संलग्न कर प्रदत्त की जिसका अवलोकन करने से ज्ञात होगा कि प्रार्थी के विरुद्ध प्रस्तावित जांच में अनाधिकृत अनुपस्थिति के आरोप में किस अवधि की अनुपस्थिति के लिये जांच की जानी है तथा उक्त जांच में किस साक्ष्य से उक्त आरोप किस प्रकार प्रमाणित होता है कर्तव्य तौर पर कोई विवरण उक्त जांच रिपोर्ट में नहीं दिया गया है जिस कारण जांच रिपोर्ट को पाकर भी उसके विरुद्ध अपना बचाव कर पाने में असमर्थ रहा।

10. अप्रार्थी संख्या 3 ने उक्त विभागीय जांच में रेल सेवा से निष्कासित किये जाने की सजा दिये जाने से पूर्व प्रार्थी को बचाव का कोई भी युक्तियुक्त अवसर प्रदान ना कर गंभीर अवैधानिकता की है, जो असंवैधानिक है जिससे प्रार्थी को उक्त जांच में प्राकृतिक न्याय का पूर्ण हनन हुआ है।

11. अनुशासनिक अधिकारी ने उपरोक्त मामले में पारित दण्डादेश संख्या सीई 308/2002/5/28 दिनांक 18.8.2003 में जांच अधिकारी द्वारा प्रस्तुत जांच रिपोर्ट का कोई उल्लेख तक नहीं किया है अतः उक्त जांच रिपोर्ट से अनुशासनिक अधिकारी की सहमति होने का इस मामले में कोई प्रश्न ही उत्पन्न नहीं होता, इस प्रकार अनुशासनिक अधिकारी द्वारा पारित उक्त दण्डादेश जो नोनस्पीकिंग आदेश की संज्ञा में आता है गलत, दोषपूर्ण एवं विधि विरुद्ध है और मनमाने तौर पर पारित किया गया है।

12. प्रार्थी द्वारा उसे उपरोक्त जांच में पारित दण्डादेश के विरुद्ध दायर अपील में अपीलीय अधिकारी ने प्रिज्यूडिस एवं बायज्ड होकर प्रार्थी को व्यक्तिगत सुनवाई का एक भी अवसर प्रदान नहीं किया और प्रार्थी को अपील में उल्लेखित आधारों पर कोई विचार ना कर अपने मनमाने तौर पर प्रार्थी की अपील निरस्त कर दिया।

13. अपीलीय अधिकारी ने अपना निर्णय दिनांक 6.11.2003 को पारित करने से पूर्व प्रार्थी की अपील पर विचार करते समय प्रार्थी को दी गई अधिकतम सजा की मात्रा पर कोई विचार ना कर गंभीर अवैधानिकता की है तथा अपीलीय अधिकारी अपने उत्तरदायित्वों का निर्वहन करने में विफल रहा है।

14. उपरोक्त मामले में अप्रार्थी संख्या 2 ने प्रार्थी की पुनरीक्षण अपील पर उपरोक्त आधारों पर विचार न कर तथा प्रार्थी को व्यक्तिगत सुनवाई का अवसर प्रदान न कर त्रुटि, अनियमितता एवं अवैधानिकता बरती है।

15. उपरोक्त वर्णित आधारों पर प्रार्थी को दी गई सजा रेल सेवा से निष्कासन गलत, दोषपूर्ण, विधि विरुद्ध तथा असंवैधानिक व शून्य है तथा प्रार्थी रेल सेवा में पुनः अपने पद पर दिनांक 18.8.2003 से प्रत्यास्थापित होकर सेवा में प्राप्त में होने वाले समस्त लाभ प्राप्त करने का अधिकारी है। उक्त आधारों पर प्रार्थी ने प्रार्थना की है उसे रेल सेवा में दिनांक 18.8.2003, निष्कासन की तिथि से पुनर्स्थापित किया जाये।

16. विपक्षी की तरफ से वादोत्तर में कहा गया है कि याचिका के मद संख्या 1 में वर्णित तथ्य इस प्रकार है कि प्रार्थी नरेन्द्रसिंह भूपू खलासी, टिकट नम्बर 30168/28 को दिनांक 31.8.81 को टी बाय के पद पर नियुक्त दी गई थी, न कि दिनांक 22.10.80 को नियुक्त हुई। प्रार्थी को दिनांक 4.10.2001 से 3.7.02 तक अनाधिकृत अनुपस्थित रहने के फलस्वरूप सहायक कारखाना प्रबंधक(आई) कैरिज की एन.आई.पी. सं. सीई 308/2002/5/28 दिनांकित 18.8.2003 द्वारा रेल सेवा से निष्कासित किया गया। एन.आई.पी. की फोटोस्टेट प्रति प्रदर्श— R-1 संलग्न है।

17. याचिका के मद संख्या 2 में वर्णित तथ्य अस्वीकार है। वास्तविकता यह है भूपू कर्मचारी ने जांच कार्यवाही में कोई आरोप पत्र की मांग नहीं की। प्रतिनिधि श्री के.एन.भार्गव व अनु. अभि./28 के नाम का प्रस्ताव किया जिस पर प्रतिनिधि की सहमति थी जिस बाबत सहमति पत्र फोटोस्टेट प्रति प्रदर्श— R-2 संलग्न है।

18. याचिका के मद संख्या 3 में वर्णित तथ्य स्वीकार नहीं है जबकि वर्णित तथ्य इस प्रकार है कि प्रार्थी को आरोप पत्र 5 सं. सीई 308/2002/5/28 दिनांक 5.7.2002 जारी किया गया, जिसे प्रार्थी ने स्वयं दिनांक 5.7.2002 को मानक फार्म 5 पर हस्ताक्षर कर प्राप्त किया है। मानक फार्म 5 की फोटोस्टेट प्रति प्रदर्श— R-3 है।

19. याचिका के मद संख्या 4 में वर्णित तथ्य अस्वीकार, मनगढ़न्त एवं आधारहीन हैं जबकि वास्तविकता यह है कि प्रार्थी ने विभाग को कोई छुट्टी की सूचना नहीं दी तथा अनाधिकृत अनुपस्थित रहा। कर्मचारी ने छुट्टी/अनुपस्थिति की सूचना के सम्बन्ध में न ही कोई साक्ष्य प्रस्तुत किया है।

20. याचिका के मद संख्या 5 में वर्णित तथ्य अस्वीकार है, जबकि वास्तविकता यह है कि विभागीय जांच कार्यवाही में प्रार्थी को उपस्थित होने हेतु घर के पाते पर रजिस्टर्ड पत्र दिनांक 15.5.03 एवं 31.5.03 को लिखकर भेजे गये जिसे प्रार्थी ने प्राप्त कर प्राप्ति रसीद दी। अतः प्रार्थी को जांच कार्यवाही में अपना बचाव करने हेतु पूर्ण अवसर प्रदान किया गया परन्तु प्रार्थी सूचना के बावजूद जांच कार्यवाही में अनुपस्थित रहा एवं पत्र दिनांक 31.5.03 के द्वारा दिनांक 17.6.03 को जांच कार्यवाही की गई जिसमें प्रार्थी का प्रतिनिधि उपस्थित हुआ, प्रशासनिक गवाहों के बयान लिए गये जिस पर प्रतिनिधि ने हस्ताक्षर किये हैं, पत्र प्राप्ति की रसीद व प्रतिनिधि के हस्ताक्षर की फोटोस्टेट प्रति प्रदर्श- R-4, 5, 6 संलग्न है।

21. याचिका के मद संख्या 7 में वर्णित तथ्य अस्वीकार है जबकि वास्तविकता यह है कि प्रार्थी ने जांच कार्यवाही में अपने प्रतिनिधि का नाम लिखित में दिया जिस पर प्रतिनिधि की सहमति थी एवं जांच अधिकारी द्वारा भेजे रजिस्टर्ड पत्र प्राप्त कर पावती दी। जांच कार्यवाही नियमानुसार व प्रार्थी को पूर्ण अवसर प्रदान करने के पश्चात उनके प्रतिनिधि की उपस्थिति में पूर्ण की गई। यह कि कार्यवाही भेजे गये रजिस्टर्ड पत्र की प्राप्ति की फोटोस्टेट प्रति प्रदर्श- R-7 संलग्न है।

22. याचिका के मद संख्या 7 में वर्णित तथ्य अस्वीकार है जबकि वास्तविकता यह है कि प्रार्थी ने जांच परिणाम की प्रति प्राप्त कर पावती दी। जांच परिणाम में आरोप पत्र संख्या सीई 308/2002/5/28 दिनांक 5.7.2002 को उल्लेख किया गया है। आरोप पत्र प्रार्थी द्वारा दिनांक 5.7.2002 को प्राप्त किया गया था जिसमें उसके विरुद्ध लगाये गये आरोप का सम्पूर्ण विवरण था। जांच परिणाम की फोटोस्टेट प्रति प्रदर्श- R-8 संलग्न है।

23. याचिका के मद संख्या 8 में वर्णित तथ्य अस्वीकार है जबकि वास्तविकता यह है कि प्रार्थी को निष्कासित किये जाने के पूर्व जांच कार्यवाही में उपस्थित होने, अपना बचाव करने व उसके बाद भी जांच परिणाम की प्रति देकर अपना बचाव पत्र प्रस्तुत करने का अवसर दिया गया था, प्रार्थी स्वयं असफल रहा।

24. याचिका के मद संख्या 9 में वर्णित तथ्य अस्वीकार है जबकि वास्तविकता यह है कि जांच रिपोर्ट प्राप्त होने पर कर्मचारी को जांच परिणाम की प्रति प्रार्थी द्वारा प्राप्त करने के बाद भी कोई लिखित प्रतिवेदन प्रस्तुत नहीं किये जाने के बाद अनुशासनिक अधिकारी के द्वारा एन.आई.पी. संख्या सीई 308/2002/5/28 दिनांक 18.8.2003 के द्वारा निष्कासित का आदेश पारित किया गया था।

25. याचिका के मद संख्या 10 में वर्णित तथ्य अस्वीकार है जबकि वास्तविकता यह है कि प्रार्थी को अपील दिनांक निल को समक्ष अधिकारी द्वारा अवलोकन कर उसमें कोई विचार योग्य तथ्य नहीं पाये जाने पर अनुशासनिक अधिकारी द्वारा किये गये दण्ड को यथावत रखा गया, इसकी सूचना प्रार्थी को सीई 308/2002/5/28 दिनांक 6.11.2003 के द्वारा किया गया। प्रार्थी को सूचित किये गये सूचना की फोटोस्टेट प्रति प्रदर्श- R-9 संलग्न है।

26. याचिका के मद संख्या 11 में वर्णित तथ्य अस्वीकार है जबकि वास्तविकता यह है कि अपील अधिकारी द्वारा सम्पूर्ण जांच कार्यवाही का अवलोकन कर सभी तथ्यों पर गम्भीर अध्ययन कर अपील अधिकारी द्वारा विधि सम्मत निर्णय पारित किया गया है।

27. याचिका के मद संख्या 12 में वर्णित तथ्य अस्वीकार है जबकि वास्तविकता यह है कि प्रार्थी की पुनरीक्षा अपील दिनांक 28.9.04 को सक्षम अधिकारी उप.मु.या.इंजी. (कैरिज), अजमेर ने अपील में कोई ठोस तथ्य नहीं पाये जाने पर रेल सेवा से निष्कासन के दण्ड को यथावत रखा एवं इसकी सूचना प्रार्थी को पत्र संख्या सीई 308/2002/5/28 दिनांक 23.11.04 द्वारा किया गया। प्रार्थी को सूचित किये अभिलेख की फोटोस्टेट R-10 संलग्न है।

28. याचिका के मद संख्या 13 में वर्णित तथ्य अस्वीकार है जबकि वास्तविकता यह है कि प्रार्थी को अनुशासनिक कार्यवाही में उचित अवसर दिये जाने के बाद अनुशासनिक अधिकारी ने एन.आई.पी. संख्या सीई 308/2002/5/28 दिनांक 18.8.2003 के द्वारा रेल सेवा से निष्कासित किया।

29. याचिका के मद संख्या 14 में वर्णित तथ्य के सम्बन्ध में कहा गया है टिप्पणी की आवश्यकता नहीं है।

30. अप्रार्थी पक्ष ने प्रार्थना की है कि विपक्ष द्वारा प्रस्तुत क्लेम का जवाब रिकार्ड पर लेते हुए श्रमिक की याचिका खारिज की जाये।

31. याची पक्ष द्वारा 21.10.10 को प्रस्तुत जवाबुलजवाब में याचिका के कथनों की पुनरावृत्ति की गयी है। पत्रावली दिनांक 30.5.12 को जॉच की शुद्धता पर बहस हेतु तत्कालीन पीठासीन अधिकारी द्वारा नियत थी जिस दिन याची पक्ष अनुपस्थित था तथा विपक्ष के विद्वान प्रतिनिधि उपस्थित थे। याची पक्ष के विद्वान प्रतिनिधि ने पीठासीन अधिकारी के समक्ष यह कथन प्रस्तुत किया कि उन्हें याची की तरफ से कोई Instruction नहीं है। इसके पूर्व प्रार्थी पक्ष निरन्तर अनुपस्थित चल रहा था जिसके कारण तत्कालीन विद्वान पीठासीन अधिकारी ने याची को दिनांक 3.5.12 को नोटिस 30.5.12 की कार्यवाही में उपस्थित होने हेतु भेजी। पंजीकृत नोटिस डाक विभाग द्वारा इस सूचना के साथ वापस प्राप्त हुई कि प्राप्तकर्ता का पता अपूर्ण है। इसके बाद पत्रावली निरन्तर मेरे कार्यभार ग्रहण करने तक प्रार्थी पक्ष की अनुपस्थिति में जॉच की शुद्धता पर बहस में चलती रही जबकि याची पक्ष की कोई उपस्थिति नहीं रही।

32. अक्टूबर सन् 2013 में मैंने पीठासीन अधिकारी के रूप में कार्यभार ग्रहण किया। पत्रावली में याची पक्ष की निरन्तर अनुपस्थिति एवं किसी प्रतिनिधि द्वारा याची का प्रतिनिधित्व न पाकर मैंने पूर्व पीठासीन अधिकारी की भाँति याची पक्ष को पुनः नोटिस भेजी जो निम्नवत् है :—

भारत सरकार/श्रम मन्त्रालय

केन्द्रिय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय,

सी.जी.ओ.कॉम्प्लेक्स, केन्द्रीय सदन,

ब्लॉक—ए, सेक्टर-10

विद्याधर नगर, जयपुर. राज.

क्रमांक : सी.जी.आई.टी. —2016.17 / 246

दिनांक 19.10.2016

सेवामें,

पंजीकृत डाक

नरेन्द्रसिंह भूतपूर्व हेल्पर खलासी,
टिकट नम्बर 30168 / 26,
कैरिज कारखाना उ. प. रेलवे, अजमेर
एवं निवासी मकान संख्या 272 / 27,
अवधपुरी जौन्सगंज
अजमेर — (राजस्थान)

विषय :— इस न्यायाधिकरण में विचारण हेतु लम्बित सी.जी.आई.टी. वाद संख्या 17 / 2007 श्री नरेन्द्रसिंह बनाम भारत संघ द्वारा महाप्रबन्धक, उ.प. रेलवे, जयपुर के निस्तारण के सम्बन्ध में।

महोदय,

आप द्वारा इस न्यायालय में उक्त मुकदमा रेलवे के विरुद्ध आप की सेवा से बर्खास्तगी के सम्बन्ध में प्रस्तुत किया गया है। दिनांक 12.1.12 से इस मुकदमे में पैरवी हेतु आज तक आप व्यक्तिगतरूप से उपस्थित नहीं आये हैं जिससे मुकदमे में आगे कोई कार्यवाही नहीं हो पा रही है। दिनांक 30.5.12 को आप के इस मुकदमे में कार्यवाही के दौरान आपके प्रतिनिधि विद्वान अधिवक्ता से मामले में आगे कार्यवाही के सम्बन्ध में पैरवी न होने के सम्बन्ध में पूछने पर उन्होंने यह बताया है कि आप काफी समय से उनके सम्पर्क में नहीं हैं तथा आप की तरफ से उन्हें कोई निर्देश नहीं है। इस सम्बन्ध में दिनांक 30.5.12 की कार्यवाही को आदेश तालिका निम्न प्रकार है :—

“प्रार्थी की तरफ से कोई उपस्थित नहीं है। अप्रार्थी प्रतिनिधि उपस्थित। प्रार्थी को रजिस्टर्ड नोटिस रेफरेन्स एवं वकालातनामा में जो पता अंकित है उसी पर प्रेषित किया गया था लेकिन रजिस्टर्ड नोटिस इस रिपोर्ट के साथ वापस आ गया है कि अंकित पता अपूर्ण है। उक्त आदेशिका लिखने के दौरान श्री कुलदीप असवाल अधिवक्ता प्रतिनिधि प्रार्थी उपस्थित हुए उन्होंने जाहिर किया कि प्रार्थी काफी लम्बे समय से उनके सम्पर्क में नहीं हैं अतः उन्होंने no instruction plead किया। अतः पत्रावली वास्ते जॉच की शुद्धता हेतु बहस के लिए दिनांक 4.6.2012 को पेश हो।”

दिनांक 4.6.12 के बाद आज तक आपकी अथवा आपके विद्वान प्रतिनिधि की उपस्थिति पत्रावली में आगे कार्यवाही के सन्दर्भ में नहीं हुई है जिसके मामला निर्धारित रूप से लम्बित प्रतीत होता है।

अतः आपको इस नोटिस के माध्यम से सूचित किया जाता है कि इस मामले में अगली तिथि 22.11.16 नियत है। आप नियत तिथि पर न्यायाधिकरण में उपस्थित होकर आगे की कार्यवाही में सहयोग करें ताकि इस पुराने मामले का निस्तारण हो सके। यदि नियत तिथि पर आप उपस्थित नहीं होते हैं तो माना जायेगा कि आप को मामले के निस्तारण में रुचि नहीं है और मामले को आप की अनुपस्थिति एकपक्षीयरूप में निस्तारित किया जायेगा।

भवदीय,

(पीठासीन अधिकारी)

सी.जी.आई.टी. जयपुर.

33. उक्त भेजी गयी नोटिस डाक विभाग से वापस प्राप्त हुई। पंजीकृत डाक से भेजी गयी एवं वापस प्राप्त नोटिस पर उल्लेख है, ‘प्राप्त जानकारी के अनुसार प्राप्तकर्ता की मृत्यु हो चुकी है अतः वापस 27.10.16 हस्ताक्षर अपठनीय’।

34. उक्त नोटिस की वापसी एवं उक्त परिस्थिति में मामले के लम्बित रहने के दौरान विपक्ष ने दिनांक 30.11.16 को इस मामले को उपशमित किये जाने की आवेदन प्रस्तुत की जिसे स्वीकार कर इस मामले को उपशमित करते हुए आदेश पारित किया गया जो निम्नवत् है :—

"30.11.2016

पेश हुआ। याची पक्ष पुकार पर अनुपरिथित है। विपक्ष के विद्वान प्रतिनिधि उपस्थित आये। इस मामले को समाप्त करने हेतु विपक्ष द्वारा आज आवेदन प्रस्तुत किया गया। आवेदन पर विपक्ष के विद्वान प्रतिनिधि को सुना एवं पत्रावली का अवलोकन किया। विपक्षी के विद्वान प्रतिनिधि ने बहस की एवं आवेदन में कहा गया है कि प्रार्थी की मृत्यु हो चुकी है एवं इस मामले में काफी समय से कोई उपरिथित नहीं हो रहा है। न्यायालय द्वारा प्रेषित पत्र भी डाक विभाग की इस टिप्पणी के साथ वापस है कि किसी उत्तराधिकारी की तरफ से आज तक कोई आवेदन प्रस्तुत नहीं है, अतः विपक्षी के न्यायिक अधिकारों की सुरक्षा हेतु इस मामले को उपशमित करने का आदेश पारित किया जाये।

पत्रावली के अवलोकन से यह जाहिर है कि याची का प्रतिनिधित्व न होने के कारण मेरे विद्वान पूर्वाधिकारी ने प्रार्थी को पत्र भेजा जिस पर यह लिखकर वापस आया कि पता अपूर्ण है। पुनः मैंने पत्र भेजा जिसके जवाब में डाक विभाग की सूचना प्राप्त हुई कि प्रार्थी की मृत्यु हो चुकी है। यह पता नहीं कि प्रार्थी की मृत्यु कब हुई है। सन् 2012 के 12.1.2012 से प्रार्थी का पता नहीं है न प्रतिनिधित्व है और तब से विपक्ष निरन्तर उपरिथित आ रहा है और मामला लम्बित चला रहा है। उक्त तथ्य एवं परिस्थिति से मैं इस निष्कर्ष पर हूँ कि इस मामले को आगे चलाने के बजाय उपशमित किया जाना न्यायोचित है। विपक्ष की आवेदन तदनुसार स्वीकार किये जाने योग्य है।

आदेश

विपक्ष की आवेदन स्वीकार की जाती है। यह मामला आदेश 22 नियम 3 (2) सिविल प्रक्रिया संहिता के अन्तर्गत उपशमित किया जाता है। पत्रावली नियमानुसार दाखिल दफ्तर हो।

न्यायनिर्णयन हेतु प्रेषित निर्देश का उत्तर तदनुसार दिया जाता है। पंचाट तदनुसार पारित किया जाता है।

भरत पाण्डेय, पीठासीन अधिकारी

नई दिल्ली, 20 फरवरी, 2017

का.आ. 438.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ बीकानेर एण्ड जयपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 113/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-12012/296/2004-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 438.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 113/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of State Bank of Bikaner & Jaipur and their workmen, received by the Central Government on 20.02.2017.

[No. L-12012/296/2004-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. No. 113/2005

Reference No. L-12012/296/2004-IR (B-I) Dated: 26.8.2005

The Secretary

All India S.B.B.J. Karmchari Sangh

Th. Shri Gurvinder Singh, B-13,

Bapunagar, Senthil, Road behind Post Office,

(Raj.), Chittorgarh.

V/S

The Assistant General Manager (I)
 State Bank of Bikaner & Jaipur,
 Zonal Office, New Fatehpura,
 Distt. Udaipur,
 Udaipur -0.

Present :

For the Applicant Union : Sh. R.C.Jain, Representative.
 For the non-applicant : Sh. R.K.Jain, Advocate.

AWARD**25.11.2016**

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2 (A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“Whether the action of the Asstt. General Manager, State bank of Bikaner & Jaipur, Udaipur in not giving the benefit of Single Window Operator to Shri Mahendra Kumar Jain, Computer Operator, Chittorgarh Branch w.e.f. 10/04/2004 is legal and justified? If not, to what relief the workman is entitle to?”

2. According to statement of claim the facts of the case is that applicant Sh. Mahendra Kumar Jain was appointed on the post of clerk in State Bank of Bikaner & Jaipur on 12.11.83 & was working in the main branch of Chittorgarh at the time of filing statement of claim. In the month of January, 2003 following 9 employees were working as permanent employees on the post of Computer Operator (computer allowances Rs.633/- per month) :-

1. Sh. Mahesh Chand Chelani
2. Sh. Ravindra Kumar Jain
3. Sh. Govindsingh Shekhawat
4. Sh. R.C.Sharma
5. Sh. Ashok Kumar Ajmera
6. Sh. P.C.Jain
7. Smt. Madhu Jain
8. Sh. S.N.Jha (Teller)
9. Sh. Acharya (Chief Cashier)

3. On 31.3.2004 in Chittorgarh branch eights created posts were existing out of which seven posts was for computer operator & one post was for Ganak (Teller). By including one post of Chief Cashier this number increases to nine. Against these nine posts Sh. R.C.Sharma was posted in chittorgarh branch against sanctioned posts. It has been further alleged that the post of computer operator is filled according to local seniority of the employees.

4. Further in para 5 of the statement of claim it has been alleged that provision has been made according to circular No. S&P/28/2003-04 dated 23.2.2004 that all the computer operators will be promoted to the post of SWO (Single Window Operator) hence, according to the above said circular all the above computer operators were promoted as permanent (SWO allowance Rs.971/- per month) & SWO allowances for Ganak & Chief Cashier was also started w.e.f. 1.4.2004.

5. In para 6, 7 & 8 it has been alleged that Sh. R.C.Sharma was transferred on 9.4.2004 to Amali Branch for vigilance enquiry in connection with misappropriation & cheating, hence, one post of SWO became vacant in Chittorgarh branch & accordingly local senior most computer operator was to be promoted to the post of SWO & step for such promotion was mandatory. Sh. Mahendra Kumar Jain was the senior most computer operator posted at Chittorgarh hence, he became entitled to the post of SWO w.e.f. 10.4.2004. It was requested by applicant Sh. Mahendra Kumar Jain as well as worker union orally & in writing to promote the applicant w.e.f. 10.4.2004 but management deliberately did not consider the request with a view to end the activities of the worker union & deprive the worker from the alleged benefit.

6. It has been alleged in para 9 of statement of claim that according to circular no. S&P/28/2003-04 dated 23.2.2004 Ganak (Teller) & computer operators existing on 31.3.2004 in Chitorgarh branch were promoted to SWO on 1.4.2004. The monthly allowance for computer operator, Ganak (Teller) & SWO was Rs.633/-, Rs.587/- & Rs.971/- respectively. Thus, they became entitle to monthly allowance @ 971/- w.e.f. 1.4.2004 & the above mentioned circular dated 23.2.2004 is applicable & effective to all the branches of the opposite party. The opposite party is biased against the worker union & applicant is the member of worker union which is in minority, hence, non-applicant has deprived the applicant from the benefit of the post of SWO. The act of the non-applicant is covered under section 25(T) & 25(U) & fit to be taken cognizance under section 29 of the I.D.Act, 1947.

7. In para 11 of the statement of claim applicant has mentioned three different instances of unfair labour practice against Sh. P.C.Jain of Chitorgarh branch , Sh. Laxminarayan Bambodia of Nimbaheda Branch & Sh. Gurvinder Singh wherein it has been alleged that Sh. Gurvinder Singh was promoted to SWO after ten months after raising the industrial dispute & Sh. Laxminarayan & Sh. P.C.Jain were promoted to the post of computer operator after raising industrial dispute before Assistant Labour Commissioner (Kota). Prayer has been made in the application to declare that Sh. Mahendra Kumar Jain is entitled to be promoted to SWO w.e.f. 10.4.2004 & consequently entitled to all the benefits of SWO.

8. In reply to statement of claim about para 1 to 11 it has been alleged that statements as alleged in those paragraphs are wrong & denied. It has been further alleged that applicant union is not a registered labour organisation & applicant Mahendra Kumar Jain is not a member of applicant union. Further, it has been alleged that applicant union is an unregistered union in minority & its membership is only 1.46 percent.

9. Against para 3 of statement of claim it has been alleged that the true fact is that on the consent of Sh. Ravindra Kumar Jain, Chief Cashier Smt. Madhu Jain was promoted to the post of computer operator against Sh. Ravindra Kumar Jain. It has been further alleged that it is wrong to say that on 1.4.2004 or on any other day all the computer operators were promoted to the post of SWO & the true fact is that in Chitorgarh branch eight workmen including Sh. S.N.Jha were promoted to the post of SWO whereas the sanctioned post of SWO was only seven. As a result of this situation Sh. R.C.Sharma was transferred in other branch & no post of SWO was vacant in the branch at the time of transfer of Sh. R.C.Sharma. Further, it has been alleged that due to promotion of Sh. Ashok Ajmera in the month of December, 2004 one post of SWO became vacant & as soon as this vacancy came in existence Sh. Mahendra Kumar Jain was promoted to SWO on 17.12.2004.

10. Further against para 6 of statement of claim it has been alleged that it is wrong to say that by transfer of Sh. R.C.Sharma one post of SWO became vacant & the true fact is that there were only seven sanctioned post of SWO whereas eight workmen were promoted to SWO including S.N.Jha, hence, Sh. R.C.Sharma was transferred & thus there was no vacant post of SWO with transfer of Sh. R.C.Sharma. Soon after promotion of Sh. Ashok Ajmera promotion of Sh. Mahendra Kumar Jain was made to the post of SWO which came into existence after promotion of Sh. Ashok Ajmera. It has been further alleged that applicant union was well aware with the fact that on all the seven posts of SWO workmen were in existence & only seven post of SWO was existing, thus, there was no vacant post & there was no occasion to promote Sh. Mahendra Kumar Jain to the post of SWO. It has been further alleged that allegation of para 8, 9 & 10 is completely wrong & unacceptable & allegation of bias is wrong & non-applicant has done no wrong as alleged in 25(T) & 25(U) of I.D.Act, 1947. Allegation in para 11 also has been specifically denied & it has been alleged that Sh. P.C.Jain, Sh. Laxminarayan Bambodia & Sh. Gurvidner has been promoted to the vacant post according to law. It has been further alleged that applicant is not entitled to any relief & statement of claim is liable to be dismissed with cost.

11. No rejoinder has been filed by the applicant against reply to statement of claim.
12. No documentary or oral evidence has been filed from either side in support of their respective pleadings.
13. Heard the arguments of learned representatives of the parties & perused the record carefully.

14. It has been argued by the learned representative of the applicant that opposite party has alleged that they have given the benefit of single window operator to applicant Sh. Mahendra Kumar Jain w.e.f. 17.12.2004 as stated in para 5 of reply to statement of claim, hence, onus is upon non-applicant to prove that such benefit has been given to the applicant Sh. Mahendra Kumar Jain by opposite party w.e.f. 10.4.2004 as alleged by applicant Sh. Mahendra Kumar Jain. Against the above argument, it has been argued by learned representative of opposite party that Sh. Mahendra Kumar Jain has been represented by applicant union & Sh. Mahendra Kumar Jain has himself admitted in his application dated 25.4.2010 filed on 26.4.2010 & application dated 15.7.2010 filed on same date i.e. 15.7.2010 that he has been given the benefit of Single Window Operator (SWO) w.e.f. 10.4.2010 hence, the question of proving the fact by opposite party that benefit of SWO has been given to applicant Sh. Mahendra Kumar Jain does not arise because the fact has already been admitted by applicant. It has been further argued that it is the responsibility of applicant to prove his case as alleged in statement of claim which has not been done by worker by leading evidence, hence, claim of the

applicant is liable to be dismissed & no benefit can be derived by applicant from the weaknesses of the opposite party or from the fact that the case of the opposite party has not been proved.

15. Before I proceed to discuss the case in light of arguments of both the parties I find it necessary to mention below contents of two applications of the applicant dated 25.4.2010 & 15.7.2010 respectively which read as under :-

To,

Hon'ble Court
CGIT
JAIPUR.

UDAIPUR
DT. 25.4.2010

Resp. Sir

Case ID No.113/05

Union vs SBBJ

With reference to above I Mahendra Kumar Jain declare that :-

1. Due to illness myself cannot personally present before your goodself.
2. I got all the relief since a long back demanded in the above case.
3. No more relief is yet to be received from the Bank (SBBJ).
4. Now I do not have any dispute with the Bank (SBBJ).
5. I withdraw all the rights assigned to union (All India SBBJ Workers Organisation- Aff. To BMS & NOBW) or its representative to defend the case against Bank (SBBJ).

Yours truly

Sig. illegible

(Mahendra Kumar Jain)

16. The above mentioned application is photocopy which has been filed on 26.4.2010 by Sh. R.K.Jain, learned representative of non-applicant & it's copy has been received on same day i.e. 26.4.2010 by learned representative of applicant union. It appears vide orders sheet dated 26.4.2010 that this application dated 25.4.2010(filed on 26.4.2010) has been received by opposite party bank from applicant Sh. Mahendra Kumar Jain through fax & photocopy of the application received through fax has been filed on record. From the order sheet dated 26.4.2010 further it appears that learned representative for the applicant has alleged that he will seek information from office bearer of the union who has filed the claim that applicant has got the benefit as alleged in the application by next date 7.6.2010. It is pertinent to mention that till 21.11.2016 when file has been reserved for award neither such information has been filed from the side of the applicant union nor any objection has been filed.

17. Application dated 17.5.2010 filed by the applicant Sh. Mahendra Kumar Jain himself, initialled by learned presiding officer reads as under :-

Before the Hon'ble Central Industrial Tribunal Cum Labour Court, Jaipur.

In the matter of Case No.CGIT 113/2005

Between

Akhil Bhartiya SBBJ Karamchari Sangh

And

Astt. General Manager
SBBJ, Udaipur.

Humble application on behalf of workman

Most respectfully Sheweth

1. That in the matter of the above reference, I am the concerned workman.
2. That I have been given the benefit of single window operator w.e.f. 10.4.2004, and as such I have no dispute left with the bank on the said issue.
3. That in view of the benefit having been granted to me w.e.f. 10.4.2004, I do not wish to pursue the present matter any further.

It is, therefore, prayed that the Hon'ble Tribunal may be pleased to pass necessary orders in view of the above submission.

15.7.2010

Signature illegible

(Mahendra Kumar Jain)

Concerned workman

18. The above mentioned application has been filed in presence of learned representative of both the parties & it has been submitted by learned representative of the union that on the basis of the alleged application no order can be passed in the reference under adjudication & union intends to continue litigation based on the reference. It is pertinent to mention that till 21.11.2016 when case has been reserved for award after hearing of both the parties, no objection has been filed against the application dated 15.7.2010.

19. Now, looking into argument of learned representative of both the parties it is important to mention further that vide application of the union dated 7.6.2006 certain documents were requested to be summoned from the custody of opposite party which was rejected by the then learned presiding officer vide order dated 15.12.2010 holding them to be irrelevant in light of the fact that applicant Sh. Mahendra Kumar Jain has already admitted that he has received the benefits as requested by him through reference. Further vide order dated 15.12.2010 the applicant was directed to lead evidence in support of claim. On 6.2.2012 an application was moved by learned representative of the applicant union to direct the opposite party to file the order passed by opposite party bank granting benefit of single window operator (SWO) to the applicant w.e.f. 10.4.2004. This application was disposed vide order dated 23.4.2012 & it was held by the then learned presiding officer that in view of admitted fact by Sh. Mahendra Kumar Jain that he has received the benefit of single window operator w.e.f. 10.4.2004 summoning of such documents relating to order is not necessary. It was further held that order will be passed on the application dated 6.2.2012 of the applicant after evidence of the applicant union. Subsequently, vide application dated 5.7.2012 by applicant union order dated 23.4.2012 was requested to be cancelled which was rejected vide order dated 11.12.2014 & applicant was again directed to produce evidence by 23.12.2014. No evidence was led by applicant union till 8.9.2016 despite numerous given opportunities, hence, further opportunity for evidence to the applicant union was closed. In view of absence of evidence from applicant side no evidence was led by opposite party. On 21.11.2016 argument of learned representative of both the parties was heard & case was reserved for award. It is evident from above facts that argument of the applicant union is devoid of merit regarding shifting of onus on opposite party. The correct position of evidence act on the issue is that it was burden on applicant union to prove that admission of Sh. Mahendra Kumar Jain was wrong that he has received the benefit which has not been discharged. In absence of discharge of this burden by applicant union contention of the applicant union can't be allowed to prevail that they want this litigation to continue.

20. Looking into pleadings of the parties, absence of any oral or documentary evidence on record, attending facts & circumstances of the case & applications of the applicant dated 25.4.2010 & 15.7.2010, I am of the view that owing to absence of evidence on record instead of dismissing the application of the applicant for prayed relief I find it just & proper to dispose the case in terms of application dated 15.7.2010 forming part of award. Accordingly, Application of the applicant union dated 28.11.2005 is allowed with observation that Sh. Mahendra Kumar Jain's application dated 15.7.2010 shall form part of award. The reference under adjudication is answered accordingly.

21. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 439.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स स्टार यूनियन दाई-इची लाइफ इंश्योरेंस कं. लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 27/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-17011/08/2013-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 20th February, 2017

S.O. 439.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2014) of the Central Government Industrial Tribunal/Labour

Court, Lucknow now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Star Union Dai-ichi Life Insurance Co. Ltd. and their workman, which was received by the Central Government on 16.02.2017.

[No. L-17011/08/2013-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 27/2014

Ref. No. L-17011/08/2013-IR(M) dated 21.04.20014

BETWEEN

Sri Durgesh Kumar Choudhary,
Asstt. Manager
Star Union Dai-ichi Life Insurance Co.Ltd.,
496/102, Chhota Chandganj
Nirala Nagar, Lucknow(UP)-226020

AND

1. The Managing Director,
Star Union Dai-ichi Life Insurance Co.Ltd.,
11th Floor, Raghuleela Arcade, I.T. Park
Sector-30A, Opp. Vashi Railway Station
Navi Mumbai-400 703
2. The Area Sales Manager
Star Union Dai-ichi Life Insurance Co.Ltd.,
401-402, Ratan Square Building Hazratganj,
Lucknow (U.P.)

AWARD

1. By order No. L-17011/08/2013-IR(M) dated 21.04.2014 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Durgesh Kumar Choudhary and the Managing Director/Area Sales Manager, Star Union Dai-ichi Life Insurance Co.Ltd., Navi Mumbai/Lucknow for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT OF STAR DAI ICHI LIFE INSURANCE CO. LTD., NAVI MUMBAI & LUCKNOW IN TERMINATING SH. DURGESH KUMAR CHOURDHARY FROM LUCKNOW TO MAINPURI VIDE ORDER DATED 19.06.2013, IS LEGAL AND JUSTIFIED? IF NOT, WHAT RELIEF THE WORKMAN IS ENTITLED TO”

3. The reference order received from the Ministry did not bear the particulars of the workman; later on corrigendum C-3 dated 04.08.2014 was received. Notices through registered post were issued to the workman. None appeared in the court to submit the claim statement or to pursue the case referred, despite the fact that more than 10 dates were fixed. The matter in issue pertained to the alleged termination of services of Sri Durgesh Kumar Choudhary vide order dated 19.06.2013 passed by the opposite party Insurance Company.

4. It appeared that the grievances of the workman might have been redressed, therefore, the case was fixed for disposal in **Lok Adalat**. But none appeared before this court.

5. There is nothing on record to adjudicate the legality or illegality of the impugned order passed by the management. Therefore, in such circumstances the workman Sri Durgesh Kumar Choudhary is not entitled to any relief. The reference under adjudication is answered as **NO CLAIM AWARD**.

Award accordingly.

14.11.2016

LUCKNOW

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 440.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स तैलांगी क्रोमाइट माइन्स ऑफ आई.डी.सी. ऑफ उड़ीसा लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 95/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-29011/30/1993-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 20th February, 2017

S.O. 440.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 95/2001) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Tailangi Chromite Mines of IDC of Orissa Ltd. and other and their workman, which was received by the Central Government on 16.02.2017.

[No. L-29011/30/1993-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR****Present :**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

Tr. INDUSTRIAL DISPUTE CASE NO. 95/2001**Date of Passing Order – 2nd January, 2017****Between:**

1. The Management of Tailangi Chromite Mines of IDC of Orissa Limited, Jajpur Road, Ferro Chrome, Cuttack, Orissa.
2. Shri Pradeep Balasamanta,
Contractor, Sukinda, Cuttack, Orissa

(And) ...1st Party-Managements.

General Secretary, Sukinda Upatyaka Mines
Workers Union, Sukinda, Cuttack, Orissa

...2nd Party-Union.

Appearances :

None	...	For the 1 st Party-Management No. 1
None	...	For the 1 st Party-Management No. 2
None	...	For the 2 nd Party-Union

ORDER

None appears on behalf of the both the parties on repeated calls. No step is also taken by either side. It is seen from the record that further proceedings of the case/reference was stayed by the Hon'ble High Court by its order dated 23.6.1997 arising out of O.J.C. No. 8066/1997 and the same stand vacated in view of the disposal of the O.J.C. on 18.11.2004. Copy of the order of the Hon'ble High Court reveals that the aggrieved parties i.e. writ applicant is to move a petition afresh under section 36 of the I.D. Act for allowing him to represent the 2nd party-Union which shall be disposed of by this Tribunal keeping in view the observations made by the Hon'ble High Court and the authority decided in the case of Paradip Port Trust. None of the parties appears despite issue of notice to them after disposal of the above writ. Hence it can be concluded that both the parties including the 2nd party-Union is not presently interested to pursue the dispute for its adjudication by the Tribunal. It is a reference of the year 1993. The parties are not taking any steps after 18.11.2004 and even after disposal of the writ and issue of notice by this Tribunal. In the above back-

drops the reference cannot be allowed to be protracted without adjudication for an indefinite period. Hence this Tribunal has no alternative than to return the reference without adjudication due to non pursuance of the dispute by the parties. The case is disposed of accordingly.

Dictated & Corrected by me.

B.C. RATH, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 441.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इण्डियन ऑयल कार्पोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 44/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-30012/7/2004-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 20th February, 2017

S.O. 441.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2005) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Indian Oil Corporation Ltd. and their workman, which was received by the Central Government on 16.02.2017.

[No. L-30012/7/2004-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/44/2005

Shri Kailash Babu Maran,
S/o Shri Ramcharan Meena,
Indian Oil Corporation,
Nishatpura, Vidisha Road,
Bhopal (MP)

...Workman

Versus

The Depot Manager,
Indian Oil Corporation Ltd.,
Nishatpura,
Bhopal (MP)

...Management

AWARD

Passed on this 19th day of January 2017

1. As per letter dated 25-5-05 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-30012/7/2004-IR(M). The dispute under reference relates to:

“Whether the action of the management of Depot Manager, Indian Oil Corporation Ltd. in not regularizing the services of Shri Prem Narayan Rao S/o Shri Munshilal & 5 others (names given below) is justified? If not, to what relief these workmen are entitled for?”

- (1) Kailash Babu Maran S/o Ramcharan
- (2) Suresh Babu Maran S/o Shri Ramcharan
- (3) Raju Narvadia S/o Shri Mansingh
- (4) Jahid Ali S/o Shri Barkat Ali
- (5) Kailash Lodhi S/o Shri Harprasad

2. After receiving reference, notices were issued to the parties. The dispute under reference pertains to denial of regularization of services of Shri Prem Narayan Rao and 5 others as shown in the order of reference. Statement of claim is filed at Page 2/1 to 2/6. The case of workman is that they are working in establishment of 2nd party since 15-20 years to be precise from 1984. They were appointed against vacant post. Since their appointment, they are continuously working. 30 other persons were also working with them. That 1st party No.1 Premnarayan is working from 1983, Kailash from 1984, Suresh from 1984, Raju Narvariya, Jahidi Ali, Kailash Lodhi working from 1989. It is alleged that management is adopting illegal labour policy. That all those employees were not given benefit of DA, HRA, TA alongwith other benefit. Dishonestly management not given appointment letters to them. They are paid Rs.1100 per month. Management has violated Section 2(R) and committed offence under Item 10, Schedule V of ID Act. That 2nd party management is not following provisions of standing orders under Standing Orders Act 1946. Standing orders of 2nd party are not displayed on notice board. Work for 14-16 hours is extracted from them. 2nd party is violating provisions of standing orders. Bonus is not paid to them. Besides 1st party workman, 30 other workmen were engaged by 2nd party. Except 1st party workman, services of other workers are regularized. The amount of PF, deducted from their salary for the period 1987 to 1992 was sent to head office of 2nd party. They are denied benefits of regular employees.

3. It is further contented that 1st party workmen are doing work of unloading petroleum products. They are working in dangerous working conditions. They are not provided helmets and other safety instruments. That 2nd party has entertained antisocial element Shri P.K.Gupta in this affairs. He used to give threats to workers to through them out from service. It is reiterated that all workman completed more than 240 days continuous service during each of the year. They are covered as employee under Section 25 B of ID Act. Management has not regularized them in service and committed unfair labour practice under Item 10 Schedule V of ID Act. The act of 2nd party is also in violation of Article 14,16 of the constitution. That services of Javed, Ganga Saran, Chandrapal, Kayyum Ali, Makbool Khan working with them are regularized. Regular pay scale is allowed to them though workman working since 1984 are discriminated. On such ground, workman prays for regularization of their services.

4. 2nd party filed Written Statement at Page 6/1 to 6/5 opposing claim of workman. 2nd party submits that reference is misconceived and not tenable. There is no employer employee relationship. The claimants are not entitled to any relief. The claimants have not stated facts. Claim of 1st party workman deserves to be dismissed.

5. 2nd party submits that it is a corporation registered under Indian Companies Act 1956 having its registered office at Indian Oil Bhavan, Mumbai. That Nishatpura Depot is one of the units of the corporation in MP. It is engaged in refining and marketing of petroleum products. The dispute under reference pertains to Nishatpura depot where presently 24 regular employees are posted for day to day functioning of the unit. Those regular workmen are recruited following recruitment policy of the corporation. That Corporation after notifying the vacancies in terms of prospective candidates, followed by interviews and issuance of appointment letters is the procedure adopted while recruiting the employees by the corporation. That for purpose of upkeep and maintaining job in the department, contract labours are engaged for jobs under contract. Such jobs are not main business of corporation neither said jobs are of perennial nature. That tenders are floated for award of such contract in respect of work to be carried out by contractor. That contractor M/S P.K.Gupta was engaged for house keeping. The labours engaged at Nishatpura is less than 20. During the year 2000 after acquisition of additional land for Nishatpura depot, it was anticipated that the number of contract labours could go beyond 20. The certificate of registration under CL(R&A)Act 1970 was obtained on 13-3-2000. The issue of regularization raised by claimants is baseless and deserves to be dismissed. 2nd party has reiterated that claim of 1st party is not legal. That claimants were engaged by Cartage Cleaning Contractor M/S P.K.Gupta for carrying out various jobs as per terms and conditions of contract awarded to him. The contractor is complying provisions of MW Act, PF Act. That said contractor had participated in joint decision before ALC, Bhopal. That the contract between contractor and corporation is valid contract. There is no direct supervision by the corporation or persons engaged by contractor P.K.Gupta. as per recruitment policy, persons are given permanent employment in IOC against permanent vacancies following recruitment procedure. It is contended that M/S P.K.Gupta contractor is employer of the claimants. He has direct supervision on claimants working under him. That workman has not completed 240 days continuous service. The employees in Nishatpura are not performing similar nature of jobs as done by the labours of the contractors. Mere presence of these persons on muster roll of contractors not entitle them for permanent employment. On such ground, 2nd party prays reference be answered in its favour.

6. 1st party filed rejoinder at Page 7/1 to 7/3 reiterating their contentions in statement of claim. It is contented that claimants are covered as workman under Section 2(s) of ID Act. That the claimants are doing work of unloading oil wagons. Other employees are regularized in service, the claimants have been discriminated.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the claimants are employees of 2 nd party IOC, Nishatpura depot or they are employees of contractor P.K.Gupta?	Claimants are employees of 2 nd party IOC
(ii) Whether the action of the management of Depot Manager, Indian Oil Corporation Ltd. in not regularizing the services of Shri Prem Narayan Rao S/o Shri Munshilal & 5 others is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

8. Point No.1 Ist party workman claims that since 1983,84,89, they are working in Nishatpura depot. They were appointed on vacant post. 2nd party denies employer employee relationship and claims that claimants were engaged by contractor M/s P.K.Gupta. they were working under control and supervision of contractor. All the claimants filed identical affidavit of their evidence. Kailash Babu working from 1984, Raju working from 1989, Kailash Lodhi working from 1989, Suresh from 1984, Premnarayan from 1983 as Khalasi. They were doing work of loading unloading petroleum products in tankers. They were not given benefits of regular employees. DA, HRA, bonus etc. They were not provided safety instruments while working in a dangerous situation.

9. Shri Kailash in his cross examination says he had received appointment letter in writing, it is copy is not produced. The order was received on 4th December 1984. The post was not advertised. He denies that he was engaged by contractor R.K.Gupta. He claims ignorance what report was submitted by R.K.Gupta before ALC. In his further cross, he says employees of IOC are doing work of similar nature. Employees of IOC do work of repairing pipeline and any other work as per instructions given. Employees engaged by contractor are not doing work of repairing pipeline. Employees of contractors are doing work of cleaning, sorting papers and carrying load. There is no suggestion that witness was not working from 1984. In his cross examination, Shri Raju Narvare says he does not know Shri P.K.Gupta. He claims ignorance whether P.K.Gupta was supplying contract labour. Since past 16-17 years, he is working as regular employee of 2nd party. He was called for work in writing. He was not interviewed, his PF was not deducted. He has no gate pass. He denies that from 2000, he was working with P.K.Gupta contractor. That there were 20 permanent employees, 12 employees working with him were doing work of loading unloading diesel petroleum tankers. He denies that before ALC, he has stated that he was employee of Shri P.K.Gupta contractor. In his statement of claim, his name is wrongly written as Lodhi.

10. Shri Jahid Ali in his cross says appointment letter was not received by him, he was not interviewed. Work of loading unloading wagons was taken from him in Nishatpura. About 25-26 regular employees were working in the depot. He does not know P.K.Gupta. in his further cross, he says that 10 persons were working under contractor P.K.Gupta. he claims ignorance what reply was submitted by P.K.Gupta before ALC, Bhopal. Every person working in depot was given gatepass. Recently the entry slips used to be prepared.

11. Evidence of Shri Suresh Babu in his cross is similar that 16-17 casual labours were working. He was doing work of loading unloading tanker. There were 9 permanent employees. he was one of the six employees not given benefit of permanent employee. He was interviewed, appointment letter was given to him. Its copy is not produced.

12. Shri Prem Narayan in his cross examination says he was not working with P.K.Gupta. he was not interviewed. Manager has directly called him for work. He was doing work of loading unloading diesel and petrol from tankers. All the six claimants were working with him total 12-13 workers were working. He admits that he was one of the 20 labours provided by contractor P.K.Gupta.

13. In cross examination of all the claimants, the engagement of all claimants from 1983, 84, 89 respectively is not shattered.

14. Management filed affidavit of evidence of witness Shri G.K.Khandate. His evidence is devoted that claimants were labours engaged by contractor P.K.Gupta. They were not on regular roll of 2nd party. There is no employer employee relationship. That Shri Gupta had obtained police verification report of his employees. No PF and ESI contribution were deducted by IOC. He was not present for his cross-examination. His evidence cannot be accepted.

15. Shri Praveen Kumar Srivastava filed affidavit of evidence. Documents M-1, M-2 are admitted. In his cross examination, Shri Praveen Kumar says he was not posted at Bhopal depot. He was unable to tell whether

Mr.Prabhakar, Suryavanshi Depot Manager were posted as Depot Manager. He admits that when goods arrive in depot by rail, it is unloaded. In his further cross, he says claimants were working from 1984 under contractor P.K.Deewan. The contract was executed. It is not produced. Attendance Register of claimants are not produced. The work of unloading tankers was done by contractor's labours. He admitted ESI card marked Exhibit W-2. The claimants were given entry pass. The list of contractors labours working during the period 1983 to 2001 is not produced. In his re-examination, witness explained that the name of contractor was P.K.Gupta and not P.K.Deewan. the witness as admitted the contracts are not produced on record.

16. So called contractor P.K.Gupta supported management that he was awarded contract in 1995 for faulage and cartage clearing. The contract was also awarded to him on 1-6-00. He had engaged 15-18 labours including the claimants. From his evidence, Register M-6 to M-11 Attendance Registers Exhibit M-6,7 contains entries of the employees working and at bottom side signature of P.K.Gupta without any dates, Exhibit M-6 is attendance register of 1984, M-7 is attendance register of 1997, Exhibit M-8 is Attendance Register for the year 2000, M-9 for the year 2003, Exhibit M-9 also bears seal of P.K/Gupta but not shown contractor. Similar seal in name of P.K.Gupta are found in M-10,11 Attendance Registers for the year 2006,2009,2010. Only signature and affixing seal in name of P.K.Gupta cannot establish that he was engaged as contractor by 2nd party. The documents produced by 2nd party Exhibit M-12 Attendance Register entries of Attendance Register for the year 2002, M-13/1 to 4 PF slip for 2001-02. Management has not produced the agreement neither licence of contractor therefore all the documents appears to support claim of management. In absence of contractor's licence, registration certificate of management under CL Act, the claim of management that claimants were employed by contractor cannot be accepted. The evidence of claimants that they were working from 1983,84,89 with 2nd party. Documents about their engagement through contractor till year 1994 are not produced. When initially the claimants were engaged by the management, they could not be said to have been engaged by contractor after gap of more than 10-15 years.

17. In his cross examination, said management's witness says in 2003, he was granted contract for transport of goods cleaning, sweeping, loading, unloading petroleum products. He has not obtained contractor's licence as he was engaging less than 20 labours. Work order for 1994-95 is not with him. The workers were working under his supervision. He had sent list of workers working under him to Depot Manager. The number of workers required is not shown. He has denied that the Attendance Register are not signed by him. Documents Exhibit M-6 to M-11 are payments registers and not attendance registers. In his further cross, above witness of management says he was submitting bills and payments used to be made to him. Any of the bills are not produced. Documents Exhibit M-12,13/1 to 4 pertains to deposit of GPF in name of claimants during the year 2001, 2002. The documents Exhibit M-1,2 are about police verification of claimants in the year 2002-03,. The work orders Exhibit M-3,4 shows that contractor had to deposit security amount but no evidence is produced. That so called contractor P.K.Gupta deposited amount of security. The terms of contract, the rates of wages payable, number of employees to be supplied are not disclosed. The quotations referred in the work order are not produced on record. Besides above, documents pertains to year 1994-95, 2001to 2007, the registers Exhibit M-6 to M-11 only bears signature of so called contractor P.K.Gupta. In Written Statement, management has mentioned that it engaged 24 employees but no documents is produced about registration of establishment under CL(R&A) Act. The documents about engagement of contractor since 1983 to 1994-95 are not produced. The evidence of claimants they were working in the establishment of 2nd party since 1984-85 to 1989 is not shattered. It shows that all claimants were working in establishment of 2nd party all those years. The documents evidence discussed above shows that to deprive benefits of regular employees, documents have been prepared in name of P.K.Gupta.

18. The claimants have produced documents Exhibit W-1 that Kailash and Premnarayan were working with 2nd party. Exhibit W-3 is report w.r.t. accident pertains to some other person and not claimants. Exhibit W-2 is I Card of Kailash for the year 1987.

19. Learned counsel for 2nd party Shri R.C Shrivastava relies on ratio held in case between

Steel Authority of India Ltd. versus Union of India and others reported in 2006(12)SCC-233. Their Lordship held the determination of question as to whether the contract labour should be abolished or not is within the exclusive domain of the appropriate Government. Where a contention is raised that the contract entered into by and between the management and the contractor is a sham one it has been adjudicated by the Industrial Adjudicator.

In present case, notification under Section 10(1) of Contract Labour Act has been issued by the Government. Therefore ratio held in the case cannot be beneficially applied in the matter.

In case between Deccan Chronicle versus G.Padda Reddy and others reported in 2004-LLR-809. The ratio pertains that merely that the name of the workman was shown in the ESI record for payment of contribution. In discharging liability as principal employer. It will not establish direct relationship of employer and employee.

20. Learned counsel for management relies on ratio held in case between

Ram Singh and others versus Union Territory, Chandigarh and others reported in 2004(1)SCC-126. Their Lordship dealing with employer employee relationship laid down criteria (i) control, (ii) integration, (iii) power of appointment and dismissal, (iv) liability to pay remuneration and deduct insurance contributions, (v) liability to organize the work and supply tools.

The evidence of contractor P.K.Gupta is not convincing about payment made by him to claimants as he has not submitted bills. The criteria laid down in above cited case are not fulfilled from his evidence. The claimants were engaged long back after so called contractor had come in picture in 994-95.

From reasons discussed above, it is clear that so called contractor P.K.Gupta has been inducted only by paper work. Claimants were employers of 2nd party. Accordingly I record my finding in Point No..

21. Point No.2- The terms of reference pertains to denial of regularization of services of all claimants. The evidence of all the claimants that they were engaged respectively in 1983,84 & 89 and working in establishment of 2nd party is not challenged. The defence of 2nd party is that workmen were engaged by contractor and not by 2nd party. Employer employee relationship has been denied. However in view of my finding in Point No.1 the claimants are engaged by 2nd party management in payment registers Exhibit M-6 to M-11, payments are made to the claimants obtaining their signatures. In Register Exhibit M-6 payments are shown for the year 1994 to 1997. In Exhibit M-7, payments are shown from the period April 97 to Feb-2000 includes names of claimants. Exhibit M-8 payments are shown period June 2000 till December 2001. Exhibit M-9 payments are shown from June 2003 to October 2004. The signatures are made on the stamps against name of the employees. In Exhibit M-10, entries of payments are taken from the period June 06 to October 08. Entries in Exhibit M-11 are about payments from April 2009 to December 2010. Payments of service are shown in those documents even after raising dispute in the year 2005. From those registers, it is sufficiently established that 1st party claimants worked more than 240 days all those years. The evidence about their working during the period 83-84, 89 till 94 is not shattered in their cross examination.

22. Learned counsel for 2nd party management reiterates that burden of proof for working for more than 240 days lies on workman relying ratio held in case between Surendranagar District Panchayat versus Dahyabhai Amarsingh reported in 2005(8)SCC-750, MP Housing Board and another versus Manoj Shrivastava reported in 2006(2)SCC-702.

23. In view of payments shown in Exhibit W-6 to W-11, ratio held in those cases cannot be applied as the claim of workman about continuous working is supported by those documents.

In case of MP Housing Board and another versus Manoj Shrivastava reported in 2006(2)SCC-702 dealing with validity of appointment held that the appointment be made for appointment to be valid. There must be compliance with constitutional statutory provisions, appointment by Competent Authority is held to be void.

Evidence of 1st party workmen clearly shows that they were not appointed following recruitment process, appointment orders were not issued to them. However they were working since the period of their engagement in 1983, 84, 89 respectively. Evidence of claimants that other persons working with them Mr. Vahid, Rashid, Kayum, Makbul are regularized is not challenged in their cross examination. Thus the claimants are denied regularization/ absorption in service while other persons working with them have been regularized. It is clear that claimants working since more than 5-20 years prior to the dispute are denied regularization.

24. On the point, learned counsel for 1st party Shri Ashok Shrivastava relies on ratio held in

Central Mines Planning and Design Institute Ltd versus Union of India reported in 2013-LAB.I.C.3682. Their Lordship dealing with employer employee relationship held considering documentary evidence found that concerned workman was performed. Their Lordship considering documentary evidence found that concerned workman was performing his job and getting wages neither in capacity of contractor nor in capacity of contract workers rather he was employee of company for almost 10 years. Paper created in support of purporting contract and contract was camouflage since beginning. The order regularizing services of workman was held proper.

Next reliance is placed on ratio held in case between ONGC versus Petroleum Coal Labour Union reported in 2015-LAB.I.C.2483. their Lordship dealing with Section 11-A, 25 B, 2A of ID Act, claim for regularization held that appointment of concerned workman was made without following any procedure under recruitment rules cannot be ground to deny regularization of service of said workman under provisions of certified standing orders after they have rendered more than 240 days service in a calendar year.

In present case, though 1st party claimants have pleaded that certified standing order were not displayed on notice board by the management, the certified standing order of 2nd party are not produced in the matter. In that case model standing order if applied, 1st party claimants would be entitled for regularization of their service after completion of 240 days service.

Reliance is also placed in case between Managing Director, Karnataka Milk Federation Ltd versus KMF Employees Petroleum reported in 2016-LLR-246 is submitted. Ratio held in the case is on the point that Appropriate

Government under Section 10 of Contract Labour Act is empowered to make reference of a dispute between employer and employee with regard to validity of contracts between employer and contractor is to be abolished. The Industrial adjudication has jurisdiction on receipt of reference after recording evidence of the parties about claim for regularization.

In case between UP State Electricity Board versus Pooran Chandra Pandey reported in 2008(116)FLR-1172. The Board has referred on 28-11-96 to regularize services of its daily wage employees working before 4-4-1990.

The facts of present case are not comparable. Any kind of decision was not taken for regularization of its daily wage employees. Ratio cannot be applied to case at hand.

25. Learned counsel for management relies on ratio held in case between

Rajasthan State Ganganagar Mills Ltd. versus State of Rajasthan and another reported in 2004(8)-SCC-161. Their Lordship held mere statement in regard on part of workman cannot be part of sufficient evidence for 240 days continuous service.

In case between Range Forest Officer versus S.T.Hadimani reported in 2002(3)SCC-25. Their Lordship held onus of proving 240 days continuous service lies on workman. As the payments made in Register Exhibit M-6 to M-11 sufficiently proves the claimants had worked more than 240 days, ratio held in the case do not support the contentions of management.

26. From evidence on record, it is clear that claimants are continuously working with 2nd party from 1983,84, 1989 respectively. No evidence is adduced about the contractors engaged till the year 1994. The denial of regularization of 1st party claimants is covered as unfair labour practice under Item 10, Schedule V. The verbatim of Item 10 is to employ workman as badly or to continue them as such for years with object to deprive the status and privileges of permanent workman is unfair labour practice. By denying regularization, 2nd party has engaged in above unfair labour practice. The admission of Shri Raju Narwadia in his cross examination that he was employee of contractor P.K.Gupta and not employee of IOC, 2nd party cannot have vital impact in the matter as said employee also was working with 2nd party since 1989. Similarly with other employees, his name is also found in the Attendance Registers. So called contractor P.K.Gupta was introduced in the year 1984-85 onwards but on facts it is found that he was not really contractor but only paper work. Thus denial of regularization to the claimants is illegal, not justified. For above reasons, I record my finding in Point No.2 in Negative.

27. In the result, award is passed as under:-

- (1) The action of the management of Depot Manager, Indian Oil Corporation Ltd. in not regularizing the services of Shri Prem Narayan Rao S/o Shri Munshilal & 5 others is illegal.
- (2) 2nd party is directed to absorb all the claimants in regular service from the date of order of reference 25-5-05 and pay the difference of pay and allowances to them.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 442.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सतना सीमेंट वर्क्स के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 196/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-29012/106/1999-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 20th February, 2017

S.O. 442.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 196/2001) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Satna Cement Works and their workman, which was received by the Central Government on 16.02.2017.

[No. L-29012/106/1999-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**
NO. CGIT/LC/R/196/2001

Shri Daddubhai Sharma
S/o Shri Rarik Sharma,
Vill Bathiya Khurd,
PO Sagmaniya,
Satna (MP)

...Workman

Versus

M/s. Satna Cement Works,
Sagmaniya Lime Stone Mines,m
PO Birla Vikas,
Satna (MP)

...Management

AWARD

Passed on this 5th day of January 2017

1. As per letter dated 10-12-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-29012/106/99-IR(M). The dispute under reference relates to:

“Whether the action of the management of Sagmania Limestone Mines, Satna Cement Works in terminating the services of Shri Daddubhai Sharma is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. 1st party workman submitted statement of claim at Page 3/1 to 3/4. Case of workman is that he was employed as mining mate and after working for more than 5 years, chargesheet was issued to him. His services were terminated without conducting enquiry. After order in Writ Petition No. 1158/01, the dispute has been referred. Workman submits he was appointed s per order dated 22-12-93 and continued on regular basis. It is also submitted by workman that he was appointed on 1-1-1991 as mining mate on fixed salary Rs.1100 per month. Management had issued certificate appreciating his work. He was recommended for appearing in mine foreman certificate exam. That h worked with devotion as loyal worker. That on 24-9-96, false chargesheet was issued to him about incident dated 27th, 28th August 1996. He replied to chargesheet on 29-8-96, notice given to him was defective. On 30-9-96, he had submitted application for change of Enquiry Officer. He had requested time on 1-10-96, enquiry was completed on 4-10-96 ignoring his protest. Management passed order of his termination on 8-10-96 is illegal and arbitrary. That he had put in more than 2 years 10 months employment. He claims to be entitled for regulation in service.

3. Workman further submits that termination of his service is violative of Section 25-F,G of ID Act and also amounts to unfair labour practice. Enquiry was empty formality. He was not given opportunity for his defence. Order of his termination is illegal. On such ground, 1st party prays for his reinstatement with consequential benefits.

4. 2nd party filed Written Statement at Page 5/1 to 5/4 opposing claim of workman. 2nd party submits the dispute has been referred as per directions by High Court in Writ petition No. 1158/01. That workman was engaged vide letter dated 22-12-93 as apprentice to acquire skill and knowledge in trade blaster for period of 3 years on stipend Rs.1100 pm. Appointment order was issued as per provisions of standing orders applicable to the establishment. Management was not obliged to give employment to the apprentice after completion of apprenticeship period.

5. 2nd party further submits that workman was engaged as apprentice. However instead of taking interest in learning work, he was in habit of floating and of his suspension. He misbehaved with the superiors. Repeatedly oral warnings were issued to him. Chargesheet was issued to workman on 23-3-96. He was suspended pending enquiry from 24-9-96. Domestic enquiry was initiated against workman. Workman admitted his guilt tendering apology. Conduct of workman was found undesirable and not suitable to retain for training. As per clause ii of the appointment letter dated 22-12-93, workman was engaged for period of 3 years. There is no vacancy in the establishment. The conditions in appointment order is clear that themanagement has right to terminate before stipulated period of apprenticeship without assigning reasons. Management reiterates workman was engaged as apprentice. Workman not worked for 5 years. Chargesheet was issued to workman. It is denied that termination of workman is illegal. Workman admitted his guilt in Enquiry Proceedings. It is denied that workman was continued on regular basis rather he was engaged as apprentice on stipend Rs.1100 per month. Workman did not improve his conduct. It is reiterated that enquiry was empty formality. It is denied that termination of workman is in violation of Section 25-F,G of ID Act. Management submits that claim of

workman deserves to be rejected. As per order dated 21-12-04, enquiry conducted against workman was found not legal and proper. Management was permitted to prove misconduct adducing evidence. Order on preliminary issue was challenged by management filing Writ Petition 7940/14. As per order dated 24-6-14, Hon'ble High Court directed to deal with the issue whether workman/ respondent was appointed as mining mate or apprentice before deciding the reference.

6. Considering pleadings on record, order on preliminary issue and directions issued by High Court, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether workman was appointed as apprentice or mining mate?	Ist party workman was appointed as Mining Mate.
(ii) Whether management proves misconduct alleged against workman?	In Negative
(iii) Whether punishment of dismissal imposed against workman is proper and legal?	In Negative
(iv) If not, what relief the workman is entitled to?"	As per final order.

REASONS

7. Though Hon'ble High Court has issued directions to decide issue whether workman was appointed as Mining mate or apprentice be decided first and then decide the reference. The parties adduced evidence and submitted all issues be decided together to avoid multiple grounds of litigation.

8. Workman in his affidavit of evidence has stated that he was employed as mining mate from 1-1-1991. He was paid salary Rs.1100 permonth. He continuously worked for 5 years till his services were terminated on 8-0-96. In his cross, workman says he passed HSc. He knows English. He denies that he was appointed as apprentice for period of 3 years. He denies his signature on Exhibit M-1. In his cross, he says he was paid Rs.1300 per month. He denies that he was appointed for 3 years period. That he passed mining exam in 1991. He has not produced certificate about mining examination. He appeared for foreman exam in 1994-95. He admits that for appearing inn exam of Foreman, passing certificate of Mining Examination is necessary. He admits that Exhibit W-1 to W-3 were obtained by him for appearing in exam of foreman. He has not produced appointment letters.

9. Management's witness Shri Azad Kumar Jain filed affidavit of his evidence stating that workman was appointed as apprentice. The order was issued by Vice President Shri M.L.Mathur as apprentice. Ist party workman was doing work at Sagmania Lime Stone Mine, Shri A.P.Shukla was blasting foreman. Workman was engaged as trainee from 1-1-1994 for period of 3 years, stipend was paid to him. From evidence of management's witness documents Exhibit M-1 to 4 are admitted in evidence. Management's witness in his cross says workman did not work under him. He personally doesnot know about his working. The record of apprentice is not maintained in personal department. He denied that workman was engaged from 1-1-1991. Workman worked till 4-10-96. He denied suggestion that to suppress engagement of Ist party from 1-1-1991, Exhibit M-1 is got prepared. It is denied that Exhibit M-3 doesnot bear signature of Ist party. He admits contents of certificate Exhibit W-1 to W-3. He claims ignorance whether information about appointing workman as apprentice was given to the advisor. He claims ignorance about completion of training of Ist party.

10. Management's witness Shri Manoj Kumar Soni in his affidavit says Ist party was appointed as apprentice from 1-1-94 for 3 years vide order dated 22-12-93. Ist party was paid stipend Rs.1100 per month. In his cross-examination, he says that he was appointed in 2nd party on 1-4-2013. Ist party donot work under him. His affidavit is not based on personal information. That Ist party did not work as mining mate. He was working as apprentice. Ist party was doing work of blasting helper. He claims ignorance whether under Apprentice act, training to Blasting helper is provided. Documents about payment to the workman are maintained by the management. Those documents are not produced. Management's witness in his further cross claims ignorance that without certificate of mining mate, blasting helper, training can be given under Apprentice Act. He claimed ignorance whether workman had submitted certificate of blaster on 25-2-08.

11. Documents Exhibit M-1 is copy of certified standing order, apprentice is defined as learner provided that no employee shall be classified as apprentice if he had training for aggregate period of service which may be prescribed in each case by the employer, provided further that the maximum period of training shall ordinarily be 3 years but for any

kind of job requiring highly specialized skill, the period may be even more but the aggregate period of training shall not exceed 4 years.

12. Management's witness Shri A.K.choudhari in his cross says that agreement of Apprentice was not registered with advisor. In exhibit M-1, appointment of workman dated 22-12-93 appointment of workman is shown for 3 years commencing from -1-1994 stipend Rs.1100. clause ii of the order provides management having power to cancel the apprenticeship without assigning reason. In Exhibit M-1 & 2, Ist party is shown apprentice. At bottom of Exhibit M-1, his date of birth is recorded as 5-6-72, HSc pass, passed blaster certificate 1988, passed mining mate certificate on 6-9-91. Exhibit M-1 is document produced by management. When workman had passed mining certificate on 6-9-91 mentioned in Exhibit M-1, the evidence of management's witness that workman was appointed as mining apprentice and mining mate cannot be believed. The evidence of both witnesses of management is contrary to the contents of Exhibit M-1.

Section 4 of Apprentice Act provides-

No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person or if he is minor, his guardian has entered into a contract of apprenticeship with the employer, (2) the apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into under sub section (1), (3) every contract of apprenticeship may contain such terms and conditions as may be agreed to by the parties to the contract. Provided that no such term or condition shall be inconsistent with any provision of this Act or any rule made thereunder, (4) every contract of apprenticeship entered into under sub section (1) shall be sent by the employer within such period as may be prescribed to the Apprenticeship Adviser for registration.

Management's witness in his cross admitted the agreement of apprentice was not sent to the Advisor. Section 7 of the act provides-

The contract of apprenticeship shall terminate on expiry of the period of apprenticeship training. Either party to a contract of apprenticeship may make an application to the Apprenticeship Adviser for the termination of the contract and when such application is made shall send by post a copy thereof to the other party to the contract. Such proceeding was not followed in present case.

Section 17 provides-

In all matters of conduct and discipline, the apprentice shall be governed by the rules and regulations applicable to the employees of the corresponding category in the establishment in which the apprentice is undergoing training.

Considering contents of Exhibit M-1, evidence of workman deserves to be accepted. That he was appointed on regular post. For above reasons, I record my finding in Point No.1 that Ist party was appointed as Mining Mate.

13. Point No.2- the enquiry against workman is held illegal. Management was allowed to prove misconduct by adducing evidence. Evidence of management witness Manoj Kumar is silent about act of misconduct committed by workman. Evidence of management's witness is devoted that workman had admitted charges in the Enquiry Proceedings. As the enquiry is vitiated, evidence in Enquiry Proceedings cannot be accepted as proof of misconduct alleged against workman.

14. From evidence of management's witness, misconduct alleged against workman cannot be established. Exhibit W-1 to 3 shows Ist party workman was working since 1992 prior to his appointment as per Exhibit M-1 on 22-12-93. Incidentally I may refer to citations relied by counsel for management.

In case between Municipal Committee, Sirsa versus Munsi Ram reported in 2005-AIR-SCW-762. Ratio held in the case pertains to whether termination is punitive or discharge simplicitor. Ratio held in the case cannot be applied to case at hand as chargesheet was issued to workman alleging misconduct but management has failed to prove charges.

Ratio held in case between Chairman, MD Mahanadi Coalfields Ltd and others versus Sadashib Behera reported in 2005(104)FLR-650. Their Lordship held Apprentice is a person who is undergoing a training. In pursuance of a contract of apprenticeship, duly registered with Apprenticeship Adviser. Ratio held in the case is different. Workman is not claiming right for employment rather he is challenging legality of termination.

In case between Regional Provident Fund Commissioner, Mangalore versus Central Areacanut and Coca Marketing and Processing Coop Lt. Mangalore reported in 2006-SCC-(L&S) 323. Their Lordship held apprentice engaged under the Apprentice Act or under the Standing orders is excluded from the said definition of employee.

As per my finding in Point No.1, Ist party workman was appointed as Mining Mate and not as apprentice, ratio in above case cannot be applied to case at hand.

In case between Vijayalakshmi Insecticides and Pesticides Ltd. and Chairman, Industrial Tribunal-cum-Labour Court, Vishakhapatnam and others reported in 2004(101) FLR-710. Their Lordship held trainee engaged by petitioner company does not fall within the definition of workman.

In view of my finding in Point No.1 workman was engaged as mining mate and not as trainee, ratio cannot be applied to case at hand.

To conclude, the workman was appointed as Mining Mate, his services were terminated alleging misconduct in the chargesheet, the charges are not proved. Termination of workman is illegal. Therefore workman deserves to be reinstated with back wages. For reasons discussed above, I record my finding in Point No.2,3 in Negative.

15. In the result, award is passed as under:-

- (1) The action of the management of Sagmania Limestone Mines, Satna Cement Works in terminating the services of Shri Daddubhai Sharma is not legal.
- (2) Dismissal of workman is set-aside. Management is directed to reinstate workman with continuity of service with full back wages.

Amount as per as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 443.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 195/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-30012/25/1998-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 20th February, 2017

S.O. 443.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 195/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and other and their workman, which was received by the Central Government on 16.02.2017.

[No. L-30012/25/1998-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 24th January, 2017

Reference: (CGITA) No. 195/2004

1. The Group General Manager,
ONGC Ltd., AvniBhawan, Parishay Shopping Centre,
D Cabin, IOC Office Road,
Gandhinagar (Gujarat)
2. M/s Rajdeep Co-op. Mazdoor Kamdar SahakariMandli,
7, Mandarshan Society, Near Ajay Tenaments,
BageFirdos, Amraiwadi,
Ahmedabad (Gujarat)

...First Party

V/s

The General Secretary,
Gujarat Petroleum Employees Union,
434/46, Gandhivas Naka, Gujarat Stadium Road,
Sabarmati,
Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri K.V. Gadhia
For the Second Party : Kum. Santoshben

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/25/98-IR(M) dated 20.04.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the Gujarat Petroleum Employees Union for reinstatement of Shri Dinesh S. Chavda, Khalasi, WSS, with full back wages and continuity of service and all other benefits of permanent workman of ONGC instead of contractual worker of M/s Rajdeep Co-op. Mazdoor Kamdar SahakariMandli Ltd. is justified? If so, to what relief the workman is entitled?”

1. The reference dates back to 20.04.1999. In response to the notices issued to both the parties, on behalf of the second party workman Dinesh S. Chavda, Gujarat Petroleum Employees Union submitted the statement of claim Ex. 3 on 26.07.1999 alleging that he had been working with General Manager, ONGC Ltd., at sajj, hereinafter referred to as ONGC, under a sham arrangement of contract as Khalasi since 03.08.1988 with a contractor M/s Rajdeep Co-op. Mazdoor Kamdar SahakariMandli Ltd. Continuously till the date of his termination of his service that is 13.11.1995. The said post of Khalasi belong to the abolish category of workman for which no contract can be granted as per the notification dated 08.09.1994 issued by the appropriate authority which is annexed with the statement of claim. He has also alleged that the job of the workman working as Khalasiwas of the nature of keeping against their post unskilled and contingent labour without any difference with the first party ONGC Labour. The nature of work was of permanent nature. He further alleged that he never saw the contractor SahakariMandli or his supervisor, hereinafter referred to as contractor, at the work place. He had been under the direct supervision and administrative control on ONGC. He used to take instructions for works from the ONGC which used to provide him the tools for discharging his duty. He has further alleged that due to the notification dated 08.09.1994; he became the direct employee of ONGC which created the master servant relationship between him and ONGC. Therefore, entitled for regularisation of service in the ONGC. He has further alleged that during his entire service period, his service record was clean and to the best satisfaction of his superior officers. His work was supervised and administratively controlled by General Manager of the ONGC at the work place. He was never found responsible for any misconduct or misbehaviour. No enquiry was ordered against him while terminating his service. At the time of termination of his service, he was not paid notice pay, leave wages, bonus and gratuity etc. Thus his termination of service was bad in law, illegal, unjust and violative of the principles of natural justice. Thus he has prayed that the contract between the ONGC and contractor be declared sham and bogus and his services be reinstated with back wages and all service benefits and any other relief with the tribunal deems just.

2. The first party ONGC on behalf of The Group General Manager (P), ONGC Ltd., Ahmedabad Project, Chandkheda, Ahmedabad (Gujarat) and The General Manager, WSS, ONGC Ltd., Chandrakhet, Ahmedabad (Gujarat) submitted a joint written statement Ex. 5 on 27.11.2000 alleging that the tribunal has no jurisdiction to entertain the reference. The reference is bad in law and non-maintainable as being vague, therefore, the reference is liable to be rejected. It has also been submitted in the written statement Ex. 5 that there was no master servant relationship between the first party ONGC and the workman. The reference is also liable to be dismissed being bad for non-joinder and mis-joinder of the necessary party as admittedly the workman was engaged by the contractor who has not been joined as party. The second party workman is not a “workman” as defined under Section 2 (S) of the Industrial Disputes Act, 1947; therefore, “no industrial dispute” exists as defined under Section 2 (K) of the Industrial Disputes Act, 1947. Thus the reference is liable to be dismissed on the aforesaid ground and also on the ground of delay and latches.

3. The ONGC in his written statement Ex. 5 has raised following preliminary contentions which are pure question of law which go to the route of the matter –

a. Admittedly the second party is employed by the contractor and hence there is no relation of master and servant between the first party and second party. Therefore, the second party is not “workman” as defined

under Section 2 (S) of the Industrial Disputes Act and hence the Hon'ble Tribunal has no jurisdiction to entertain the present reference.

- b. As stated hereinafter, as per the say of the second party is engaged by the contractor and not by the first party corporation. Therefore, no any 'Industrial Dispute' exists as defined under Section 2 (K) of the Industrial Disputes Act. Therefore, the reference is required to be rejected.
- c. The first party submits that the Hon'ble Tribunal appointed under the Industrial Disputes Act has no jurisdiction to entertain the present reference. There are provisions under the contract labour (regulation and abolition) Act, 1970 to entertain such type of dispute. The contract act is a special annexed for the contract labours and hence the authority appointed under the Industrial Disputes Act has no jurisdiction to entertain the present reference.

4. It has been further alleged by the ONGC in his written statement Ex. 5 that all the contentions made in the statement of claim are not admitted which are not true and correct, therefore, all the averments made in the statement of claim are denied. The truth is that the workman second party was engaged by a contractor SahakariMandali, first party no. 2 as khalasi since 03.08.1988 on a daily rated basis. He has been engaged by the contractor in the abolished category as mentioned in the notification dated 08.09.1994. It is further denied that the second party workman was working as a khalasi, for which the ONGC had been keeping and engaging their all unskilled labour/contingent labour. It has been further submitted that the ONGC had not been engaging any khalasi to compare the work of this workman with them. ONGC used to recruit its employee through its well defined process testing their various technical and administrative capabilities, therefore, the skill and competence of the contract workman cannot be compared with the ONGC employee. It is wrong to say that this workman was helping as khalasi at WSS and was doing the work of a permanent nature. He had not been under the supervision and administrative control of the ONGC as alleged by him. He has failed to prove his allegations by any documentary evidence. Thus the reference is liable to be dismissed on the aforesaid ground.

5. On the basis of the pleadings, the following issues arise for decision in this reference :

- i. Whether the demand of the Gujarat Petroleum Employees Union for reinstatement of Shri Dinesh S. Chavda, Khalasi, WSS, with full back wages and continuity of service and all other benefits of permanent workman of ONGC instead of contractual worker of M/s Rajdeep Co-op. Mazdoor Kamdar SahakariMandli Ltd. is justified?
- ii. To what relief, if any, the second party workman is entitled?

6. The second party workman to prove his case has submitted number of documents vide list Ex. 9 the zerox copies of the entry pass issued by Rajdeep Group Mazdoor Kamdar SahakariMandli Ltd., school leaving certificate, experience letter issued by Electrotherm India Ltd., OBC certificate issued by the Government of Gujarat and also submitted the affidavit as examination in chief Ex. 8.

7. The first party ONGC submitted the zerox copies of the attested copy of registration U/s 7 of the CLARA Act with forwarding letter and license obtained by the contractor U/s 12 i.e. first party no. 3 vide list Ex. 10.

8. The second party workman also submitted the written argument Ex. 12.

9. I considered the evidence oral and documentary adduced by the parties and also the written arguments as submitted.

10. **Issue No. i and ii:** Both the issues are inter-related, therefore, taken up together.

11. The burden to prove that the contract entered into between the ONGC and the second party workman was sham and bogus and also the work which the second party workman was doing was of permanent and perennial nature and also that the second party workman was having master servant relationship with the ONGC and his work was supervised and administratively controlled by the ONGC were lying on the second party workman. To prove these issues, the second party workman submitted his affidavit Ex. 8 reiterating the averments made in the statement of claim Ex. 3 but in his cross-examination, he admitted that he was not given any appointment letter by the ONGC. He was engaged by the Rajdeep Group Mazdoor Kamdar SahakariMandli Ltd. He was receiving salary from the aforesaid contractor, Rajdeep Group Mazdoor Kamdar SahakariMandli Ltd. Pay slip was issued by it which used to deduct his provident fund from his salary and deposits in the Provident Fund authority. He used to get salary for the days he worked with the aforesaid contractor but he stated that the machineries and tools for the work he used to do were provided by the ONGC. His services were terminated on 10.07.1998 and he raised the dispute in the year 2000.

12. The first party ONGC did not prefer to lead any oral evidence but submitted the zerox copies of the attested copy of registration U/s 7 of the CLARA Act with forwarding letter and license obtained by the contractor U/s 12 i.e. first party no. 3 vide list Ex. 19 which reveals that the Rajdeep Group Mazdoor Kamdar SahakariMandli Ltd. was issued a

registration certificate by the ONGC for providing contract labours from 01.07.1994 to 30.06.1995 and from 10.11.1995 to 31.10.1998.

13. As already said, the burden to prove the case was lying on the second party workman and the second party workman has already admitted that he was engaged by Rajdeep Group Mazdoor Kamdar SahakariMandali Ltd. for working as fitter and the aforesaid contractor was registered under Section CLARA Act and he was also issued the licence to provide the contract labour. He has also admitted that he was paid the salary for the days he worked by the aforesaid contractor. He also used to deduct provident fund and gratuity, therefore, mere supervisions and control of the ONGC officers over the contract labour as to whether they were doing the work up to the quality will not make the contract labour as workman of the ONGC despite the fact that the work was of permanent nature.

14. In following cases, Punjab and Haryana High Court 2016 LLL 25 and Delhi High Court 2016 (148) FLR 460 held that “In the absence of relationship of employer-employee, the principal employer cannot be directed by the Labour Court to reinstate the employee of the contractor”.

15. In the present case, the second party workman has failed to establish the relationship of employer and employee between the second party workman and the first party ONGC. Therefore, no relief can be granted against the first party ONGC.

16. The relief against Rajdeep Group Mazdoor Kamdar SahakariMandali Ltd. cannot be granted as the second party workman has not preferred to implead the aforesaid contractor as necessary party. Thus the reference is bad for non-joinder of the necessary party as well as the mis-joinder of the party because the ONGC cannot be said to be the employer of the second party workman as said above.

17. Thus in the light of the aforesaid discussions, all the aforesaid issues are decided in negative and against the second party workman.

18. The second party workman is not entitled for any relief as referred in the impugned reference.

19. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 444.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 324/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-30012/27/2000-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 20th February, 2017

S.O. 444.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 324/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and others and their workman, which was received by the Central Government on 16.02.2017.

[No. L-30012/27/2000-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 24th January, 2017

Reference: (CGITA) No. 324/2004

1. The Group General Manager (P),
ONGC Ltd., Ahmedabad Project, Chandkheda,
Ahmedabad (Gujarat)
2. The General Manager,
WSS, ONGC Ltd., Chandrakheda,
Ahmedabad (Gujarat)
3. M/s Rajdeep Co-op. Mazdoor Kamdar Sahakari Mandli,
Vedmata Society, IOC Road, Chandkheda,
Ahmedabad (Gujarat) ...First Party

V/s

The General Secretary,
Gujarat Petroleum Employees Union,
434/46, GandhivasKoba Road,
Sabarmati,
Ahmedabad (Gujarat) ...Second Party

For the First Party : Shri K.V. Gadhia
For the Second Party : Kum. Santoshben

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/27/2000-IR(M) dated 18.08.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDEULE

“Whether the demand of the Gujarat Petroleum Employees Union, Ahmedabad to declare that the arrangement through which Shri Lil Zaveri employed as Helper (Fitter) in ONGC Ahmedabad Project is sham and bogus and the concerned workman who has been terminated from service w.e.f. 10.07.1998 is entitled for reinstatement and absorption is legal and justified? If yes then to what relief the concerned workman is entitled to and from which date?”

1. The reference dates back to 18.08.2000. In response to the notices issued to both the parties, the second party workman Lil Zaveri through Gujarat Petroleum Employees Union submitted the statement of claim Ex. 7 on 20.03.1991 alleging that he had been working with General Manager, ONGC Ltd., at saij, hereinafter referred to as ONGC, under a sham arrangement of contract as helper (fitter) since 15.01.1996 continuously getting Rs. 1650/- as wages at the time of termination of service that is 10.07.1998. The said post of helper/fitter belong to the abolish category of workman for which no contract can be granted as per the notification dated 08.09.1994 issued by the appropriate authority which is annexed with the statement of claim. He has also alleged that the job of the workman working as helper/fitter was of the nature of keeping against their post unskilled and contingent labour without any difference with the first party ONGC Labour. The nature of work was of permanent nature. He further alleged that he never saw the contractor SahakariMandali or his supervisor, hereinafter referred to as contractor, at the work place. He had been under the direct supervision and administrative control on ONGC. He used to take instructions for works from the ONGC which used to provide him the tools for discharging his duty. He has further alleged that due to the notification dated 08.09.1994; he became the direct employee of ONGC which created the master servant relationship between him and ONGC. Therefore, entitled for regularisation of service in the ONGC. He has further alleged that during his entire service period, his service record was clean and to the best satisfaction of his superior officers. His work was supervised and administratively controlled by one A.K. Srivastav, General Manager of the ONGC at the work place. He was never found responsible for any misconduct or misbehaviour. No enquiry was ordered against him while terminating his service. At the time of termination of his service, he was not paid notice pay, leave wages, bonus and gratuity etc. Thus his termination of service was bad in law, illegal, unjust and violative of the principles of natural justice. Thus he has prayed that the contract between the ONGC and contractor be declared sham and bogus and his services be reinstated with back wages and all service benefits and any other relief with the tribunal deems just.

2. The first party ONGC on behalf of The Group General Manager (P),ONGC Ltd., Ahmedabad Project, Chandkheda,Ahmedabad (Gujarat) andThe General Manager,WSS, ONGC Ltd., Chandrakheda, Ahmedabad (Gujarat) submitted a joint written statement Ex. 11 alleging that the tribunal has no jurisdiction to entertain the reference. The reference is bad in law and non-maintainable as being vague, therefore, the reference is liable to be rejected. It has also

been submitted in the written statement Ex. 11 that there was no master servant relationship between the first party ONGC and the workman. The reference is also liable to be dismissed being bad for non-joinder and mis-joinder of the necessary party as admittedly the workman was engaged by the contractor who has not been joined as party. The second party workman is not a “workman” as defined under Section 2 (S) of the Industrial Disputes Act, 1947; therefore, “no industrial dispute” exists as defined under Section 2 (K) of the Industrial Disputes Act, 1947. Thus the reference is liable to be dismissed on the aforesaid ground and also on the ground of delay and latches.

3. The ONGC in his written statement Ex. 11 has raised following preliminary contentions which are pure question of law which go to the route of the matter –

- a. Admittedly the second party is employed by the contractor and hence there is no relation of master and servant between the first party and second party. Therefore, the second party is not “workman” as defined under Section 2 (S) of the Industrial Disputes Act and hence the Hon’ble Tribunal has no jurisdiction to entertain the present reference.
- b. As stated hereinafter, as per the say of the second party is engaged by the contractor and not by the first party corporation. Therefore, no any ‘Industrial Dispute’ exists as defined under Section 2 (K) of the Industrial Disputes Act. Therefore, the reference is required to be rejected.
- c. The first party submits that the Hon’ble Tribunal appointed under the Industrial Disputes Act has no jurisdiction to entertain the present reference. There are provisions under the contract labour (regulation and abolition) Act, 1970 to entertain such type of dispute. The contract act is a special annexed for the contract labours and hence the authority appointed under the Industrial Disputes Act has no jurisdiction to entertain the present reference.

4. It has been further alleged by the ONGC in his written statement Ex. 11 that all the contentions made in the statement of claim are not admitted which are not true and correct, therefore, all the averments made in the statement of claim are denied. The truth is that the workman second party was engaged by a contractor Sahakari Mandali, first party No. 3 as helper/fitter since 15.01.1996 on a salary of Rs. 1650/- per month. He has been engaged by the contractor in the abolished category as mentioned in the notification dated 08.09.1994. It is further denied that the second party workman was working as a helper, for which the ONGC had been keeping and engaging their all unskilled labour/contingent labour. It has been further submitted that the ONGC had not been engaging any helper to compare the work of this workman with them. ONGC used to recruit its employee through its well defined process testing their various technical and administrative capabilities, therefore, the skill and competence of the contract workman cannot be compared with the ONGC employee. It is wrong to say that this workman was helping as fitter at WSS and was doing the work of a permanent nature. He had not been under the supervision and administrative control of the ONGC as alleged by him. He has failed to prove his allegations by any documentary evidence. Thus the reference is liable to be dismissed on the aforesaid ground.

5. On the basis of the pleadings, the following issues arise for decision in this reference :

- i. Whether the arrangement through which the workman Lil Zavari employed in ONGC Ahmedabad Project is sham and bogus?
- ii. Whether the termination of the second party workman from service w.e.f. 10.07.1998 was not legal and justified, therefore, entitled for reinstatement and absorption in the ONGC?
- iii. To what relief, if any, the second party workman is entitled?

6. The second party workman to prove his case has submitted number of documents vide list Ex. 12 the zerox copies of the entry pass issued by Rajdeep Group Mazdoor Kamdar SahakariMandali Ltd., school leaving certificate, experience letter issued by Electrotherm India Ltd., OBC certificate issued by the Government of Gujarat and also submitted the affidavit as examination in chief Ex. 18.

7. The first party ONGC submitted the zerox copies of the attested copy of registration U/s 7 of the CLARA Act with forwarding letter and license obtained by the contractor U/s 12 i.e. first party no. 3 vide list Ex. 19.

8. The second party workman also submitted the written argument Ex. 20 and 21.

9. I considered the evidence oral and documentary adduced by the parties and also the written arguments as submitted.

10. **Issue No. i and ii :** Both the issues are inter-related, therefore, taken up together.

11. The burden to prove that the contract entered into between the ONGC and the second party workman was sham and bogus and also the work which the second party workman was doing was of permanent and perennial nature and also that the second party workman was having master servant relationship with the ONGC and his work was

supervised and administratively controlled by the ONGC were lying on the second party workman. To prove these issues, the second party workman submitted his affidavit Ex. 18 reiterating the averments made in the statement of claim Ex. 7 but in his cross-examination, he admitted that he was not given any appointment letter by the ONGC. He was engaged by the Rajdeep Group Mazdoor Kamdar Sahakari Mandali Ltd. He was receiving salary from the aforesaid contractor, Rajdeep Group Mazdoor Kamdar Sahakari Mandali Ltd. Pay slip was issued by it which used to deduct his provident fund from his salary and deposits in the Provident Fund authority. He used to get salary for the days he worked with the aforesaid contractor but he stated that the machineries and tools for the work he used to do were provided by the ONGC. His services were terminated on 10.07.1998 and he raised the dispute in the year 2000.

12. The first party ONGC did not prefer to lead any oral evidence but submitted the zerox copies of the attested copy of registration U/s 7 of the CLARA Act with forwarding letter and license obtained by the contractor U/s 12 i.e. first party No. 3 vide list Ex. 19 which reveals that the Rajdeep Group Mazdoor Kamdar Sahakari Mandali Ltd. was issued a registration certificate by the ONGC for providing contract labours from 01.07.1994 to 30.06.1995 and from 10.11.1995 to 31.10.1998.

13. As already said, the burden to prove the case was lying on the second party workman and the second party workman has already admitted that he was engaged by Rajdeep Group Mazdoor Kamdar Sahakari Mandali Ltd. for working as fitter and the aforesaid contractor was registered under Section CLARA Act and he was also issued the licence to provide the contract labour. He has also admitted that he was paid the salary for the days he worked by the aforesaid contractor. He also used to deduct provident fund and gratuity, therefore, mere supervisions and control of the ONGC officers over the contract labour as to whether they were doing the work up to the quality will not make the contract labour as workman of the ONGC despite the fact that the work was of permanent nature.

14. In following cases, Punjab and Haryana High Court 2016 LLL 25 and Delhi High Court 2016 (148) FLR 460 held that "In the absence of relationship of employer-employee, the principal employer cannot be directed by the Labour Court to reinstate the employee of the contractor".

15. In the present case, the second party workman has failed to establish the relationship of employer and employee between the second party workman and the first party ONGC. Therefore, no relief can be granted against the first party ONGC.

16. The relief against Rajdeep Group Mazdoor Kamdar Sahakari Mandali Ltd. cannot be granted as the second party workman has not preferred to implead the aforesaid contractor as necessary party. Thus the reference is bad for non-joinder of the necessary party as well as the mis-joinder of the party because the ONGC cannot be said to be the employer of the second party workman as said above.

17. Thus in the light of the aforesaid discussions, all the aforesaid issues are decided in negative and against the second party workman.

18. The second party workman is not entitled for any relief as referred in the impugned reference.

19. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 445.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 351/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-30011/73/2000-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 20th February, 2017

S.O. 445.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 351/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and others and their workman, which was received by the Central Government on 16.02.2017.

[No. L-30011/73/2000-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 2nd February, 2017

Reference: (CGITA) No. 351/2004

1. The Group General Manager (P),
ONGC Ltd., Ankleshwar Project,
Ankleshwar,
Bharuch (Gujarat)
2. M/s. Industrial Security Services,
Vaishali Cinema, Varachha Road,
Surat (Gujarat) ...First Party

V/s

The President,
All Gujarat State Kamdar Union,
Khadki Falia, At.Vav, PO – Kodadara,
Tehsil – Vagra,
Bharuch (Gujarat) ...Second Party

For the First Party : Shri C.S. Naidu Associates
For the Second Party : Shri A.N. Patel

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/73/2000-IR(M) dated 23.10.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDEULE

“Whether the demand of the union to absorb/regularize the services of Shri Ambubhai Maganbhai Rathod and 25 others as per list enclosed as permanent and direct employees of ONGC Ltd., with time scale of pay of their category of work equivalent to their similar placed regular employee of ONGC Ltd., by declaring the contract as ‘sham’ contract is fair and justified? If so, to what relief the concerned workmen are entitled to?”

1. The reference dates back to 23.10.2000. The first party submitted the vakalatpatra Ex. 6 of his advocate C.S. Naidu Associate on 14.09.2001 and second party workmen submitted their vakalatpatra Ex. 7 of their advocate Vakil H. Vasawada and company on 14.02.2001. Workmen also submitted the statement of claim Ex. 9 on 17.12.2002. The first party also submitted the written statement Ex. 14 on 08.01.2003. The workmen also moved an application for interim leave and application for production of documents on 08.01.2003. The first party also submitted the no. of documents vide application Ex. 17 on 08.01.2003. Since then the second party has not been leading evidence. On 21.06.2016, The President, Petroleum Mazdoor Sangh vide application Ex. 46, 47 and 48 prayed that matter be taken on board and also prayed that the following workmen namely

- i. Takhatsang B. Gohil
- ii. Devjibhai J. Vaghela
- iii. Ratansang J. Padhiyar
- iv. Pravinbhai C. Makwana
- v. Ganpatbhai C. Chauhan
- vi. Bharatbhai M. Patel
- vii. Sarvan Kalidas Gohil

do not want to prosecute the reference and also prayed that their name be deleted from the reference. The said applications were allowed and the reference was taken on board on the same day and the names of the aforesaid workmen were deleted from the reference vide order Ex. 47 dated 21.06.2016. It was also ordered that the reference as regards the remaining workmen shall proceed as usual on 26.07.2016. Since 26.07.2016, the matter was also taken up on 01.12.2016 and today on 02.02.2017 but none appeared for the remaining workmen to lead evidence. Thus it appears that the second party has not been willing to prosecute the case.

2. Therefore, the tribunal has no alternative but to dispose of the reference in the absence of the evidence of the second party workman with the observation as under: “the demand of the union to absorb/regularize the services of Shri Ambubhai Maganbhai Rathod and 18 others as per list enclosed as permanent and direct employees of ONGC Ltd., with time scale of pay of their category of work equivalent to their similar placed regular employee of ONGC Ltd., by declaring the contract as ‘sham’ contract is not fair and also unjustified.”

3. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 446.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 398/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-30011/49/2001-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 20th February, 2017

S.O. 446.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 398/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and others and their workman, which was received by the Central Government on 16.02.2017.

[No. L-30011/49/2001-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 16th January, 2017

Reference: (CGITA) No. 398/2004

1. The Group General Manager (P),
ONGC Ltd., Ankleshwar,
Bharuch (Gujarat) – 393010
2. M/s. New India Security Services,
113, Omkar Chambers, Opp. Railway Station,
Surat (Gujarat)

...First Party

V/s

The President,
All Gujarat State Kamdar Union,
Khadki Faliya, At Vav,
Post Kadodara, Taluka Vagra,
Bharuch (Gujarat)

...Second Party

For the First Party : Shri P.S. Chari
 For the Second Party : Shri A.N. Patel

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/49/2001-IR(M) dated 10.07.2001 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of ONGC Ltd., Ankleshwar Project, Ankleshwar in not considering the demand of Shri Mansangbhai Ranchod Bhai Solanki & 3 other workmen (as per list enclosed) for absorption and regularisation is justified? If not, to what relief the concerned workmen are entitled?”

1. The reference dates back to 10.07.2001. The second party submitted the statement of claim Ex. 7 on 27.01.2005 while the reference was pending in the Industrial Tribunal, Ahmedabad. The first party ONGC Ltd., Bharuch did not prefer to submit the written statement. Both the parties stopped to attend the tribunal after transfer of the reference to this tribunal on 01.10.2010. Therefore, fresh notices were issued to both the parties to appear on 21.10.2011 by this tribunal. Thereafter on 15.10.2015, ONGC Mazdoor Sangh moved an application Ex. 11 to withdraw and delete the workmen namely

- i. Mansinh R. Solanki
- ii. Vitthal K. Vasava
- iii. Rana Gambhirsinh C.

from the reference. Same was allowed on 04.11.2015 on vide order Ex. 11.

2. On 03.02.2016, Shri A.N. Patel on behalf of the remaining only one second party workman moved an application Ex. 13 for further action. The case was listed on 13.06.2016 for second party workman to lead evidence but neither A.N. Patel nor the workman turned up to lead evidence.

3. It appears that out of total 4 workmen, 3 workmen have withdrawn from the reference on 04.11.2015 and remaining one is not serious and sincere to the dispute. Therefore, this tribunal has no option but to decide the reference in the absence of the evidence of the remaining one workman with the observation as under: “the action of the management of ONGC Ltd., Ankleshwar Project, Ankleshwar in not considering the demand of remaining one workman for absorption and regularisation is justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 447.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 400/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-30011/51/2001-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 20th February, 2017

S.O. 447.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 400/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and others and their workman, which was received by the Central Government on 16.02.2017.

[No. L-30011/51/2001-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 16th January, 2017

Reference: (CGITA) No. 400/2004

1. The Group General Manager (P),
ONGC Ltd., Ankleshwar, Bharuch (Gujarat) – 393010
2. M/s. New India Security Services,
113, Omkar Chambers, Opp. Railway Station,
Surat (Gujarat)
3. M/s. Investigation & Security Services Pvt. Ltd.,
402, Darpan Building, R.C. Dutt Road, Alkapuri,
Baroda (Gujarat)
4. M/s. Industrial Security Services,
1st Floor, Opp. Jagdamba Mills, A.K. Road,
Surat (Gujarat) ...First Party

V/s

The President,
All Gujarat State Kamdar Union,
Khadki Faliya, At Vav,
Post Kadodara, TalukaVagra,
Bharuch (Gujarat) ...Second Party

For the First Party : Shri P.S. Chari
For the Second Party : Shri A.N. Patel

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/51/2001-IR(M) dated 10.07.2001 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDEULE

“Whether the action of the management of ONGC Ltd., Ankleshwar Project, Ankleshwar in not considering the demand of Shri Saiyed Mohsin & 17 other workmen (as per list enclosed) for absorption and regularisation is justified? If not, to what relief the concerned workmen are entitled?”

1. The reference dates back to 10.07.2001. The second party submitted the statement of claim Ex. 7 on 27.01.2005 while the reference was pending in the Industrial Tribunal, Ahmedabad. The first party ONGC Ltd., Bharuch did not prefer to submit the written statement. Both the parties stopped to attend the tribunal after transfer of the reference to this tribunal on 01.10.2010. Therefore, fresh notices were issued to both the parties to appear on 21.10.2011 by this tribunal. Thereafter on 15.10.2015, ONGC Mazdoor Sangh moved an application Ex. 11 to withdraw and delete the workmen namely.

- i. Avdhesh Kumar Yadav
- ii. Shantaben Narsing Parmar
- iii. RafikYakub Patel
- iv. Haji Yusufbhai Suleman
- v. Mehmud Yakub Kathi
- vi. Abdul Rahim Ali Patel

vii. Saiyed Mosin Bapu

from the reference. Same was allowed on 04.11.2015 on vide order Ex. 11.

2. On 03.02.2016, Shri A.N. Patel on behalf of the remaining only one second party workman moved an application Ex. 13 for further action. The case was listed on 13.06.2016 for second party workman to lead evidence but neither A.N. Patel nor the workman turned up to lead evidence.

3. It appears that out of total 18 workmen, 7 workmen have withdrawn from the reference on 04.11.2015 and remaining 11 workmen are not serious and sincere to the dispute. Therefore, this tribunal has no option but to decide the reference in the absence of the evidence of the remaining 11 workmen with the observation as under: “the action of the management of ONGC Ltd., Ankleshwar Project, Ankleshwar in not considering the demand of remaining 11 workmen for absorption and regularisation is justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 448.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 404/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-30011/52/2001-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 20th February, 2017

S.O. 448.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 404/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and others and their workman, which was received by the Central Government on 16.02.2017.

[No. L-30011/52/2001-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 16th January, 2017

Reference: (CGITA) No. 404/2004

1. The Group General Manager (P),
ONGC Ltd., Ankleshwar, Bharuch (Gujarat) – 393010
2. M/s New India Security Services,
113, Omkar Chambers, Opp. Railway Station,
Surat (Gujarat)
3. M/s Investigation & Security Services Pvt. Ltd.,
402, Darpan Building, R.C. Dutt Road, Alkapauri,
Baroda (Gujarat)
4. M/s Industrial Security Services,
1st Floor, Opp. Jagdamba Mills, A.K. Road,
Surat (Gujarat)

...First Party

V/s

The President,
All Gujarat State Kamdar Union,
Khadki Faliya, At Vav,
Post Kadodara, TalukaVagra,
Bharuch (Gujarat)

...Second Party

For the First Party : Shri P.S. Chari
For the Second Party : Shri A.N. Patel

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/52/2001-IR(M) dated 10.07.2001 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of ONGC Ltd., Ankleshwar Project, Ankleshwar in not considering the demand of Shri Chaturbhai Dahyabhai Parmar & 10 other workmen (as per list enclosed) for absorption and regularisation is justified? If not, to what relief the concerned workmen are entitled?”

1. The reference dates back to 10.07.2001. The second party submitted the statement of claim Ex. 7 on 27.01.2005 while the reference was pending in the Industrial Tribunal, Ahmedabad. The first party ONGC Ltd., Bharuch did not prefer to submit the written statement. Both the parties stopped to attend the tribunal after transfer of the reference to this tribunal on 01.10.2010. Therefore, fresh notices were issued to both the parties to appear on 21.10.2011 by this tribunal. Thereafter on 15.10.2015, ONGC Mazdoor Sangh moved an application Ex. 10 to withdraw and delete the workmen namely.

- i. Parmar Chatur Dahyabhai
- ii. Solanki Chaturbhai Rayji
- iii. Solanki Jashodaben Chhtubhai
- iv. Solanki Vinodkuma Khuman Singh
- v. Rana Vikram Arjun Singh
- vi. Govind Parshottam Vaghela
- vii. Vasava Ashwin Rayjibhai
- viii. Pathan Mohmadbhai Hassanbhai

from the reference. Same was allowed on 04.11.2015 on vide order Ex. 10.

2. On 03.02.2016, Shri A.N. Patel on behalf of the remaining only one second party workman moved an application Ex. 13 for further action. The case was listed on 13.06.2016 for second party workman to lead evidence but neither A.N. Patel nor the workman turned up to lead evidence.

3. It appears that out of total 11 workmen, 8 workmen have withdrawn from the reference on 04.11.2015 and remaining 3 workmen are not serious and sincere to the dispute.

4. Therefore, this tribunal has no option but to decide the reference in the absence of the evidence of the remaining 3 workmen with the observation as under: “the action of the management of ONGC Ltd., Ankleshwar Project, Ankleshwar in not considering the demand of remaining 3 workmen for absorption and regularisation is justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 449.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एयरपोर्ट अथॉरिटी ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1432/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-11011/13/2002-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 20th February, 2017

S.O. 449.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1432/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Airport Authority of India and their workman, which was received by the Central Government on 16.02.2017.

[No. L-11011/13/2002-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 30th January, 2017

Reference: (CGITA) No. 1432/2004

The Airport Director,
Airport Authority of India,
S.V. Patel International Airport,
Ahmedabad (Gujarat) – 380003First Party

V/s

The President,
Gujarat Audhyogik Kamdar Maha Mandal,
Block No. 492/2950,
G.H.B., New Bapunagar Cross Road,
Ahmedabad (Gujarat) - 380019Second Party

For the First Party :

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-11011/13/2002-IR(M) dated 16.08.2004 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the industrial dispute raised by Gujarat Audhyogik Kamdar Mahamandal against the management of Airport Director, Airport Authority of India, Ahmedabad Airport over treating the employees as regular and permanent justified? If so, to what relief the workmen are entitled?”

1. The reference dates back to 16.08.2004. The second party workman submitted the statement of claim Ex. 3 on 19.01.2006 and the first party submitted the written statement Ex. 5 on 15.12.2015. Since then the second party has been absent. The General Secretary, Gujarat Audhyogik Kamdar Mahamandal, Ahmedabad moved an application Ex. 6 and 7 seeking adjournment on 22.04.2016 and 30.01.2017 and on 30.01.2017, also moved an application enclosing the envelope of registered post with acknowledgement and application by which he tried to get the workman appear in tribunal for evidence said letter received back as unserved. Thus the aforesaid second party union General Secretary, Gujarat Audhyogik Kamdar Mahamandal, Ahmedabad has expressed un-ability to prosecute the case.

2. Thus the reference is disposed of in non-prosecution of the case with the observation as under: “the industrial dispute raised by Gujarat Audhyogik Kamdar Mahamandal against the management of Airport Director, Airport Authority of India, Ahmedabad Airport over treating the employees as regular and permanent is not justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 450.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिन्दुस्तान पेट्रोलियम कार्पोरेशन लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 110/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-30011/38/2005-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 20th February, 2017

S.O. 450.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 110/2005) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Hindustan Petroleum Corporation Ltd. and other and their workman, which was received by the Central Government on 16.02.2017.

[No. L-30011/38/2005-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 25th January, 2017

Reference: (CGITA) No. 110/2005

1. The General Manager (HR),
M/s HPCL, Jamshedji Tata Road,
Mumbai – 400020
2. The Plant Manager,
M/s HPCL, At & PO: Sardhav (Sonipur),
Gandhidham (Gujarat) ...First Party

V/s

The General Secretary,
Gujarat Kamdar Mandal,
402/403, Shilp II, Nr. Sales India,
Income Tax, Ashram Road,
Ahmedabad (Gujarat) – 380009 ...Second Party

For the First Party : Shri Punil I. Shah

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/38/2005-IR(M) dated 17.11.2005 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether (1) Shri Kalubhai Gandabhai Dantani (2) Shri Abhubhai Gandabhai Dantani (3) Shri Rajubhai Gandabhai Dantani (4) Pradhanji Gandabhai Dantani (5) Jagatji Cnaduji Thakor (6) Bharatji Shankarji Thakor (7) Ratanji Babaji Thakore and (8) Govindbhai Bhikhabhai Thakore are the workmen of HPCL, LPG Bottling Plant, Gandhinagar, Gujarat? If yes, what relief these workmen are entitled to and from which date?”

1. The reference dates back to 17.11.2005. The first party put in his appearance through his solicitor D.C. Gandhi Associates vide vakalatpatra Ex. 6 on 27.02.2006 but the second party workman despite service by registered post did not prefer to appear and also did not submit his statement of claim. The acknowledgement Ex. 3 regarding service on second party workman was also received. Despite a long wait, the tribunal issued notice Ex. 7 to the second party to appear on 11.04.2011 but to no result till date.

2. Thus it appears that the second party is not willing to prosecute the case. Therefore, the reference is disposed of in the absence of the evidence and also statement of claim of the second party with the observation as under: “(1) Shri Kalubhai Gandabhai Dantani (2) Shri Abhubhai Gandabhai Dantani (3) Shri Rajubhai Gandabhai Dantani (4) Pradhanji Gandabhai Dantani (5) Jagatji Cnaduji Thakor (6) Bharatji Shankarji Thakor (7) Ratanji Babaji Thakore and (8) Govindbhai Bhikhabhai Thakore were not the workmen of HPCL, LPG Bottling Plant, Gandhinagar, Gujarat and therefore not entitled for any relief.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 451.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 140/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-30011/31/2008-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 20th February, 2017

S.O. 451.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 140/2010) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and others and their workman, which was received by the Central Government on 16.02.2017.

[No. L-30011/31/2008-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 16th January, 2017

Reference: (CGITA) No. 140/2010

1. The Executive Director,
ONGC Ltd., Hazira Project, Hazira,
Surat (Gujarat)
2. The Proprietor,
M/s Demi Engineering, Nr. Bus Stop No. 2,
Ichhapore, Hazira Main Road,
Surat (Surat)

...First Party

V/s

The President,
Gujarat Mazdoor Panchayat,
Shram Shakti, Post Box No. 77,
GOP, Opp. Prabhat Press, Mirzapur Road,
Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri K.V. Gadhia

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/31/2008-IR(M) dated 02.03.2009 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the union Gujarat Mazdoor Panchayat, Ahmedabad for regularization of Smt. Meenaben Pravinbhai & 55 other contract workmen (names shown in Exb. 1) in the establishment of ONGC Ltd., Hazira Plant, Surat is legal, proper and just? If so, to what relief the concerned contract workmen are entitled to?”

1. The reference dates back to 02.03.2009. The second party submitted the statement of claim Ex. 10 on 15.04.2010. The first party submitted the written statement Ex. 15 on 26.08.2010. On 28.10.2015, Petroleum Mazdoor Sangh moved an application Ex. 17 to withdraw and delete the workmen namely :

- i. Meenaben Pravinbhai
- ii. Hasmukhbhai Bhikhhabhai
- iii. Laxmiben Bhikhhabhai
- iv. Zaverbhai Punjabhai
- v. Hasumatiben Chaganbhai
- vi. Rekhaben Kantibhai
- vii. Shantaben Jashwantbhai
- viii. Kishorebhai Bachubhai
- ix. Balubhai Sukhabhai
- x. Sukhdevbhai Karsanbhai
- xi. Nileshbhai Amitbhai
- xii. Madhuben Jinabhai
- xiii. Pushpaben Maheshbhai
- xiv. Jyotiben Harishbhai
- xv. Jyotiben Hasmukhbhai
- xvi. Induben Mohanbhai
- xvii. Taraben Pravinbhai
- xviii. Laxmiben Rameshbhai
- xix. Neetaben Amratbhai
- xx. Thakorbhai Jinabhai
- xxi. Prabhassing Babubhai Baria
- xxii. Manojbhai Bhajibhai
- xxiii. Jashwantbhai Chanabhai
- xxiv. Gopalbhai Nanjibhai
- xxv. Shardaben Gopalbhai
- xxvi. Kamuben Thakorbhai
- xxvii. RAMILaben Kantibhai
- xxviii. Laxmiben Nanubhai
- xxix. Hansaben Pavibhai

from the reference. Same was allowed on 04.11.2015 on vide order Ex. 17.

2. Since then, the remaining second party workmen or their union, Petroleum Mazdoor Sangh or Gujarat Mazdoor Panchayat did not turn up to lead evidence despite giving them last opportunity to lead evidence on 03.02.2016, 13.06.2016 and 24.10.2016.

3. Thus it appears that out of total 56 workmen, 29 workmen have withdrawn from the reference on 04.11.2015 and remaining 27 workmen are not serious and sincere to the dispute.

4. Therefore, this tribunal has no option but to decide the reference in the absence of the evidence of the remaining 27 workmen with the observation as under: “the demand of the union Gujarat Mazdoor Panchayat, Ahmedabad for regularization of remaining 27 workmen in the establishment of ONGC Ltd., Hazira Plant, Surat is not legal, proper and just.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 452.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स कृष्णा इंजीनियरिंग वर्क्स एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 122/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-30011/20/2013-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 20th February, 2017

S.O. 452.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 122/2013) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Krishna Engineering Works and other and other and their workman, which was received by the Central Government on 16.02.2017.

[No. L-30011/20/2013-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 18th January, 2017

Reference: (CGITA) No. 122/2013

1. The Proprietor,
M/s Krishna Engineering Works,
211, Sunshine Apartment, Opp. Sahyog Garden,
Gorwa – Panchvati Road,, Vadodara (Gujarat) – 390016
2. The Executive Director,
IOC Ltd., Gujarat Refinery,
PO Jawaharnagar, Baroda (Gujarat) ...First Party

V/s

The Secretary,
Bharatiya Karmachari Sangh,
101, Shirali Complex, Anustu Tekri,
Kothi Char Rasta,
Vadodara (Gujarat) – 390001 ...Second Party

For the First Party : None
 For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/20/2013-IR(M) dated 18.06.2013 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the union for regularization of services of (1) Mrs. Patel Ami Y., (2) Mrs. Amita R. Nai, (3) Mr. Macwan Aripa R., (4) Ms. Monali P. Parikh, (5) Mr. Macwan Ruben S., (6) Mr. Macwan Alpesh A., (7) Mr. Rathod Azaruddin, (8) Mr. Patel Pinal C. and (9) Mr. Goswami Harsha is legal, proper and justified? If so, what relief the concerned workmen are entitled to?”

1. The reference dates back to 18.06.2013. Notice Ex. 2 was issued to the parties to appear on 10.09.2015. All the parties did not prefer to submit their submission on the date fixed. Again a fresh notice was issued to all the parties to appear on 17.06.2016 but again all the parties did not respond to the notices issued to them despite the fact that the acknowledgement of the receipt of the notices to all the parties was received.

2. Thus it appears that the all the parties have not been willing to prosecute the reference. Therefore, this tribunal has no alternative but to dispose of the reference against the second party workman with the observation as under: “the demand of the union for regularization of services of (1) Mrs. Patel Ami Y., (2) Mrs. Amita R. Nai, (3) Mr. Macwan Aripa R., (4) Ms. Monali P. Parikh, (5) Mr. Macwan Ruben S., (6) Mr. Macwan Alpesh A., (7) Mr. Rathod Azaruddin, (8) Mr. Patel Pinal C. and (9) Mr. Goswami Harsha is not legal, proper and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 453.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स कृष्णा इंजीनियरिंग वर्क्स एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 123/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-30011/21/2013-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 20th February, 2017

S.O. 453.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 123/2013) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Krishna Engineering Works and other and other and their workman, which was received by the Central Government on 16.02.2017.

[No. L-30011/21/2013-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
 Presiding Officer, CGIT-cum-Labour Court,
 Ahmedabad,
 Dated 18th January, 2017

Reference: (CGITA) No. 123/2013

1. The Proprietor,
M/s Krishna Engineering Works,
211, Sunshine Apartment, Opp. Sahyog Garden,
Gorwa – Panchvati Road,, Vadodara (Gujarat) – 390016
2. The Executive Director,
IOC Ltd., Gujarat Refinery,
PO Jawaharnagar, Baroda (Gujarat) ...First Party

V/s

The Secretary,
Bharatiya Karmachari Sangh,
101, Shirali Complex, Anustu Tekri,
Kothi Char Rasta,
Vadodara (Gujarat) – 390001 ...Second Party

For the First Party : None

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/21/2013-IR(M) dated 18.06.2013 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDEULE

“Whether the action of the management of M/s Krishna Engineering Works, Baroda in discontinuing the services of Mrs. Ami Y. Patel, Biochemist and Mrs. Amita R. Nai, Physiotherapist w.e.f. 29.08.2011 is legal, proper and justified? If so, what relief the concerned workmen are entitled to?”

1. The reference dates back to 18.06.2013. Notice Ex. 2 was issued to the parties to appear on 10.09.2015. All the parties did not prefer to submit their submission on the date fixed. Again a fresh notice was issued to all the parties to appear on 17.06.2016 but again all the parties did not respond to the notices issued to them despite the fact that the acknowledgement of the receipt of the notices to all the parties was received.

2. Thus it appears that the all the parties have not been willing to prosecute the reference. Therefore, this tribunal has no alternative but to dispose of the reference against the second party workman with the observation as under: “the action of the management of M/s Krishna Engineering Works, Baroda in discontinuing the services of Mrs. Ami Y. Patel, Biochemist and Mrs. Amita R. Nai, Physiotherapist w.e.f. 29.08.2011 is legal, proper and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 454.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एम. आर. क्लीन सर्विस एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 19/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-30012/62/2013-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 20th February, 2017

S.O. 454.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2014) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. M.R. Clean Service and others and their workman, which was received by the Central Government on 16.02.2017.

[No. L-30012/62/2013-IR (M)]
RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 18th January, 2017

Reference: (CGITA) No. 19/2014

1. M/s M.R. Clean Service,
305, Vishwamohini Complex,
Hightension Road, Subhanpura,
Vadodara (Gujarat)
2. The Dy. General Manager,
Gujarat Refinery, P.O. Jawaharnagar,
Baroda (Gujarat) ...First Party

V/s

Mr. Bharatbhai Nathubhai Solanki,
Block No. 5, Sohan Park, B/h T.B. Hospital,
Gotri Road,
Vadodara (Gujarat) ...Second Party

For the First Party : None
For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/62/2013-IR(M) dated 17.02.2014 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of contractor M/s M.R. Clean Services in terminating the services of Mr. Bharatbhai Nathubhai Solanki w.e.f. 10.12.2011 is legal, just and proper? If not, to what relief the concerned workman is entitled to?”

1. The reference dates back to 17.02.2014. Notice Ex. 2 was issued to the parties to appear on 10.09.2015. All the parties did not prefer to submit their submission on the date fixed. Again a fresh notice was issued to all the parties to appear on 17.06.2016 but again all the parties did not respond to the notices issued to them despite the fact that the acknowledgement of the receipt of the notices to all the parties was received.
2. Thus it appears that the all the parties have not been willing to prosecute the reference. Therefore, this tribunal has no alternative but to dispose of the reference against the second party workman with the observation as under: “the action of the management of contractor M/s M.R. Clean Services in terminating the services of Mr. Bharatbhai Nathubhai Solanki w.e.f. 10.12.2011 is legal, just and proper.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 455.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 16/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.02.2017 को प्राप्त हुआ था।

[सं. एल-30011/1/2016-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 20th February, 2017

S.O. 455.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2016) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and others and their workman, which was received by the Central Government on 16.02.2017.

[No. L-30011/1/2016-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 3rd February, 2017

Reference: (CGITA) No. 16/2016

1. The General Manager (HR),
M/s ONGC Ltd., Avani Bhavan, Chandkheda,
Ahmedabad (Gujarat) – 380005
2. The Manage I/C (Security),
M/s ONGC Ltd., Avani Bhavan, Chandkheda,
Ahmedabad (Gujarat) - 380005
3. The Director,
M/s Max Vigil Securitiy Pvt. Ltd.,
Nr. RTO Office, Subhash Bridge,
Ahmedabad (Gujarat) – 380027

...First Party

V/s

The President,
Akhil Bhartiya Karamchari Mahasang,
28/B, Narayan Park, B/h Chandkheda Railway Station,
Sabarmati,
Ahmedabad (Gujarat) – 382470

...Second Party

For the First Party : :

For the Second Party : :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/1/2016-IR(M) dated 08.02.2016 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the union President, Akhil Bhartiya Karamchari Mahasang, Ahmedabad for reinstatement in service with full back wages of Shri Pramod Kumar B. Yadav, contractual labour/security guard in the establishment of General Manager (HR), ONGC Ltd., Ahmedabad is justified? If yes, what relief the workmen are entitled to?”

1. The reference dates back to 08.02.2016. After service of the notices to all the parties, the first party no. 3 The Director,M/s Max Vigil Securitiy Pvt. Ltd.,Nr. RTO Office, Subhash Bridge,Ahmedabad and the second party workman himself vide their letter Ex. 1,2 and 3 submitted that the matter has been settled by way of compromise. No further action is required at the level of tribunal. They don't want to proceed with the matter.

2. Therefore, the reference be dropped as not pressed. Thus, the reference is disposed of as not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 456.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 83/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-22012/306/2004-आईआर (सीएम-II)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 456.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 83/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 20.02.2017.

[No. L-22012/306/2004-IR (CM-II)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 83 OF 2005

PARTIES :

The management of Victoria West Colliery of M/s. BCCL

Vs.

Sh. H. S. Deoghoria

REPRESENTATIVES:

For the management : Sri P. K. Das, Learned Advocate

For the union (Workman) : Sri S. K. Singh, Branch Secretary

Industry : Coal State : West Bengal

Dated : 03.01.2017

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **No. L-22012/306/2004-IR(CM-II)** dated 18.07.2005 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the fitment made on promotion in respect of Sh. H. S. Deoghoria, Account Clerk of Victoria West Colliery of M/s BCCL is legal and justified? If not, to what relief the workman is entitled to?”

1. Having received the Order **NO. L-22012/306/2004(IR(CM-II))** dated 18.07.2005 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. **83 of 2005** was registered on 17.08.2005 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

2. Case called out. Sri P. K. Das, Learned Advocate appears on behalf of the management. None appears on behalf of the union/workman.

3. On perusal of the case record it is found that the Union last appeared before the Tribunal on 14.03.2007 through Branch Secretary, Sri S. K. Singh. Thereafter the Union neither appeared nor took any step. Registered notices were

also issued to the Union on 18.05.2009 and 15.10.2014. So far 19 dates have been granted to the Union after 14.03.2007 but to no effect. It seems that the union is now not at all interested to proceed with the case further. The case is also very old – in the year of 2005. So I have no option left but to close the case as neither the union nor the workman taking any step after 14.03.2007.

4. As such the case is closed and accordingly a ‘**No Dispute Award**’ is hereby passed.

ORDER

Let an “Award” be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 457.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 14/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-22012/63/2006-आईआर (सीएम-II)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 457.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 20.02.2017.

[No. L-22012/63/2006-IR (CM-II)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 14 OF 2007

PARTIES :

The management of Victoria West Colliery of M/s. BCCL

Vs.

Sh. Bhudhiram

REPRESENTATIVES:

For the management : Sri P. K. Das, Learned Advocate

For the union (Workman) : Sri L. S. Prasad, Joint General Secretary, JCMC

Industry : Coal State : West Bengal

Dated : 10.01.2017

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **NO. L-22012/63/2006 (IR(CM-II))** dated 02.03.2007 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDEULE

“Whether the action of the management of Victoria West Colliery by not providing SPRA to Sri Budhiram while transferring him from P. R. to T. Rate and not regularised him after completion of one year Trainee period is legal and justified? If not, to what relief is the workman entitled?”

1. Having received the Order **NO. L-22012/63/2006-IR(CM-II)** dated 02.03.2007 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. **14 of 2007** was registered on 03.05.2007 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

2. Case called out. Sri P. K. Das, Learned Advocate appears on behalf of the management. None appears on behalf of the workman.

3. On perusal of the case record it is found that Sri L. S. Prasad, Joint General Secretary of the Union appeared only once on 09.10.2007 and filed Written Statement. Thereafter neither the workman nor the Union appeared before the court though 41 dates were granted. Registered notices were also issued on 24.07.2009, 30.11.2011 and 17.11.2014 but to no effect. It seems that neither the workman nor the union is now interested to proceed with the case further.

4. As such the case is closed and accordingly a '**No Dispute Award**' is hereby passed.

ORDER

Let an "Award" be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 458.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 83/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-22012/112/2007-आईआर (सीएम-II)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 458.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 83/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of M/s. ECL and their workmen, received by the Central Government on 20.02.2017.

[No. L-22012/112/2007-IR (CM-II)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 83 OF 2007

PARTIES :

The management of Chora 10 Pits Colliery Kenda Area of M/s. ECL

Vs.

Mr. Salil Kumar Mondal & 2 others

REPRESENTATIVES:

For the management : Sri P. K. Das, Learned Advocate

For the union (Workman) : Sri Sushil Banerjee, General Secretary of the Union

Industry : Coal

State : West Bengal

Dated : 16.01.2017

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **No. L-22012/112/2007-IR(CM-II)** dated 18.10.2007 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Chora 10 Pits Colliery under Kenda Area of M/s. ECL in denying promotion/withdrawing the promotion order in respect of Mr. Salil Kumar Mondal, Mr. Sumit Kumar Ghosh and Mr. Robin Mondal is legal and justified? If not, to what relief are the workmen entitled?”

- Having received the Order **No. L-22012/112/2007 (IR(CM-II))** dated 18.10.2007 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. **83 of 2007** was registered on 05.11.2007/03.12.2007 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.
- Case called out. Sri P. K. Das, Learned Advocate appears on behalf of the management. None appears on behalf of the workmen.
- On perusal of the case record it is found that evidence of the workmen has been filed on 14.09.2015. Thereafter 6 dates have been granted but neither the witness nor the workmen or any representative of the workmen has turned up before the court for cross-examination. It seems that neither the workmen nor the Union is now interested to proceed with the case further. The case is also very old – of the year 2007. It will not be wise to keep this old record pending without any fruitful result.
- As such the case is closed and accordingly a ‘**No Dispute Award**’ is hereby passed.

ORDER

Let an “Award” be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 459.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 19/04) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-22012/127/2003-आईआर (सीएम-II)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 459.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/04) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of South Eastern Coalfields Limited and their workmen, received by the Central Government on 20.02.2017.

[No. L-22012/127/2003-IR (CM-II)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

NO. CGIT/LC/R/19/2004

The Secretary(Central),
RKKMS(INTUC),
Johilla Area, PO Nowrozabad,
Distt. Umaria (MP)

...Workman/Union

Versus

General Manager,
South Eastern Coalfields Limited,
Johilla Area of SECL,
PO Nowrozabad,
Distt. Umaria (MP)

...Management

AWARD

Passed on this 6th day of January 2017

1. As per letter dated 23-2-2004 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/127/2003-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of SECL, Pinoura Project of Johilla Area in dismissing Shri Suresh Kumar Javre, Explosive Carrier from services is legal and justified? If not, to what relief he is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/6. Case of Ist party workman is that he was appointed by 2nd party as badly tub loader on 14-2-89. He was confirmed on post of explosive career Cat II on 18-2-89. He was falsely implicated in the disciplinary case. Chargesheet was issued to him fabricating the allegations that he was not on duty on 13-10-00 as it was his weekly off. That he was picked up by Union leader and entered in the premises of colliery misbehaved with workman and colliery workers Ramesh Patel. Enquiry Officer recorded his finding on 15-1-01 that Union leader Shri B.K.Singh was let off by management with final punishment of stoppage of one increment. Workman and others Ramesh Patel mechanical fitter were dismissed from service. Workman submits that punishment imposed is disproportionate to the alleged misconduct. He has reiterated that he denied wages alleged against him. The charges were fabricated. He challenged order of his dismissal filing appeal. However his appeal was rejected without reasoned order. Workman reiterates that he was dismissed with adequate evidence. On such ground, workman prays for his reinstatement with backwages. Workman died during pendency. His widow Geeta Javra is substituted as LR.

3. 2nd party management filed Written statement opposing claim of workman at page 9/1 to 9/18. 2nd party submits that workman Suresh Kumar was employed as explosive career. Workman had criminal antecedents. Management submitted application at Pali Police station requesting details of the criminal cases against workman. The information was received from said police station. Complaints were also received from representative of AITUC or CWF, INTUC, CITU regarding criminal activities of workman requesting that workman should not be permitted to stay in workers colony. It was also submitted that because of workman, stay in colony, law and order situation used to be created. Management had received complaints from Ajeshwar Patel, Udai Bhan Singh, CDS operator Ramnaresh Tiwari, Ramganesh Dwivedi, Neelambar Singh, Balram alleging that on 13-10-00 around 1 AM, Ist party workman alongwith B.K.Singh and others had entered premises under intoxication, abused officers indecently, damaging the property and manhandling them. Chargesheet was issued to workman under Clause 26.12,22,23,27 of the standing orders. The reply given by workman was not found satisfactory. Shri O.P.Singh was appointed as Enquiry Officer. Shri N.K.Joshi was appointed as management representative. Enquiry was conducted on various dates. Workman was allowed defence representative. Enquiry was conducted for serious misconduct. Enquiry Officer submitted report holding workman guilty. For proved charges, punishment of dismissal was imposed. Workman has not given details of the charges alleged and proved against Shri B.K.Singh punishment was imposed against Shri B.K.Singh considering the nature of charges proved. Workman cannot claim parity in the matter of punishment imposed against Shri B.K.Singh. It is denied that B.K.Singh was exonerated from charges. On such contentions, 2nd party prays for rejection of claim of Ist party workman.

4. Ist party filed rejoinder at Page 11/1 to 11/10 reiterating his contentions in statement of claim and denying adverse averments made in the Written Statement.

5. As per order dated 5-11-14, enquiry conducted against workman is found legal and proper.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

7. Point No.1 Enquiry against workman is found legal as per order dated 5-11-14. Question whether charges alleged against workman are proved needs to be decided considering evidence in Enquiry Proceedings. Chargesheet Exhibit M-1/1 was issued to workman for committing act of abuses, assault, causing damage to properties. During course of enquiry statement of management's representative N.K.Joshi is recorded at Page 9/51. He has narrated the complaints received against Ist party workman that under intoxication he had engaged in assault causing damage to the properties and abuses to the employees working. Workman Suresh, B.K.Singh and Ramesh Patel were involved in the incident,. Management's representative was not cross examined. Various complainants were not examined in the Enquiry proceedings. However statement of Ist party workman was recorded and he admitted to have committed certain acts under intoxication. He did not want to cross examine the witness of management. The non-examination of the complainants would have been fatal in the matter. Workman in his statement has admitted his intoxication. He committed certain acts therefore findings of Enquiry Officer cannot be said without evidence. The findings of Enquiry Officer cannot be said without evidence. The findings of Enquiry Officer are supported by some evidence and therefore I do not find reason to interfere with the findings of Enquiry Officer. For reasons discussed above, I record my finding in Point No.1 in Affirmative.

8. Point No.2- As per my finding in point No.1 misconduct alleged against workman are proved. The proved charges against workman are of serious nature committing assault, abusing other employees under intoxication causing damage to the property to the management. Learned counsel for 2nd party Shri A.K.Shashi relies on ratio held in case between-

Commissioner of Police versus Jayasurian and another reported in 1997(6)SCC-75. Their Lordship dealing with charge memo in departmental enquiry held need not be issued by the appointing authority himself. Any other authority, who is controlling authority can initiate departmental proceedings and issue chargesheet.

In case between Nand Kishore Prasad versus State of Bihar and others reported in 1978(3)SCC-366. Their Lordship dealing with dismissal of service after departmental enquiry, the delinquent officer is found guilty of charge there must be some evidence. Authority must act without bias and predilection and must pass speaking orders discussing evidence.

In present case, evidence in enquiry proceedings particularly statement of workman has accepted, he committed certain acts under intoxication, he may be excused.

In case between West Bokaro Colliery versus Ram Pravesh Singh reported in 2009-I-LLJ-220(SC). Their Lordship held the standard of proof in departmental proceedings was preponderance of probabilities and the Tribunal had set aside the dismissal by observing that the charges against the respondent were not proved beyond reasonable doubt, erroneously applying the yardstick of criminal proceedings.

Considering the proved charges against workman are of serious nature, punishment of dismissal imposed against him does not call for interference. Therefore I record my finding in Point No.2 in Negative.

9. In the result, award is passed as under:-

(1) The action of the management of SECL, Pinoura Project of Johilla Area in dismissing Shri Suresh Kumar Javre, Explosive Carrier from services is legal and proper.

(2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 460.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 76/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-22012/422/99-आईआर (सीएम-II)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 460.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 76/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Western Coalfields Limited and their workmen, received by the Central Government on 20.02.2017.

[No. L-22012/422/99-IR (CM-II)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/76/2000

The President,
Coal Mines Engineering Workers Association,
PO Palachourai,
Distt. Chhindwara (MP)

...Workman/Union

Versus

The Manager,
Nandan Mine No.1 of WCL,
PO Nandan,
Distt. Chhindwara (MP)

...Management

AWARD

Passed on this 6th day of January 2017

1. As per letter dated 29-2/7-3/2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/422/99/IR(CM-II). The dispute under reference relates to:

“Whether the action of the Manager, Nandan Mine No. 1 of WCL, PO Nandan, Distt. Chhindwara (MP) in terminating the services of Shri Gunaram S/o Gopal, General Mazdoor of Nandan Mine No.1 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party Union submitted statement of claim on behalf of workman Shri Gunaram S/o Gopal General Mazdoor Nandan Mines. Union submits that date of appointment of workman is 16-5-74, date of his termination 15-11-94, date of birth of workman is 16-7-54. Workman Gunaram S/o Gopal was working as General Mazdoor in Nandan Mine. Chargesheet was issued for unauthorized absence under clause 18.1 of standing order is illegal. Clause 18.1 of standing order does not deal with misconduct of unauthorised absence. Management had issued letter of appointment of Enquiry Officer mentioning misconduct under clause 18.1 chargesheet was issued on 17-7-93. Enquiry Officer was appointed on 24-7-93. Memo of enquiry were issued on 25-7-93, 28-8-93, 4-9-93. Ist party workman was dismissed from service as per order dated 15-11-94. Punishment is imposed contrary to the provisions of standing order. Management adopted wrong process while his attendance was all along irregular. It was found that workman was not interested in duty. Attendance of workman in 1990 was 111 1/2 days, in 1991 was 152 days, in 1992 was 70 days and in 1993 – 31 days. Chargesheet was issued to workman was

replied by workman. Reply was not accepted. Shri B.Prasad was appointed as Enquiry Officer. Shri H.Rehman was appointed as management representative. Enquiry was conducted on various dates 31-7-93, 2-8-93, 16-8-96. Workman did not appear in enquiry. He remained absent. Enquiry was conducted ex parte. Enquiry Officer submitted his report on 20-3-94 holding workman guilty of charges. Considering the proved charges of unauthorised long absence are of grievous nature affecting production, punishment of removal was imposed against workman. Management prays for rejection of claim.

3. Ist party workman filed rejoinder at Page 5/1 to 5/2 reiterating his contentions in statement of claim.

4. As per order dated 4-7-13, enquiry conducted against workman is found proper and legal.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the charges alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

6. Enquiry conducted against workman is found proper and legal as per order dated 4-7-2013. Chargesheet issued to workman Exhibit W-8 clause 18(i) of standing order is mentioned. However the particular of charge in the chargesheet is of absence from duty more than 10 days without permission, without satisfactory reasons. Copy of certified standing order produced on record shows said misconduct may be covered under clause 26.41` of standing order mentioning wrong clause of certified standing order cannot be said vital as the workman was explained charges against him of unauthorized absence. At Exhibit W-2, he admitted his absence from duty claiming that he was suffering from illness. Various memo of enquiry were sent to workman to attend Enquiry Proceedings along with his defence representative. In Enquiry Proceeding Exhibit M-9, workman has admitted his absence explaining that he was suffering from illness during the relevant period. As workman has admitted his absence, it establish the charge against workman. For above reasons, I record my finding in Point No.1 in Affirmative.

7. Point No.2- In view of my finding in Point No.1 charge of unauthorized absence is framed against workman, as per chargesheet Exhibit W-8 workman was alleged to be absent from 3-8-93. The exact period of his absence is not shown in chargesheet. Chargesheet was issued on 6-9-93. If the date of issuing chargesheet is considered, absence of workman comes hardly one month 3 days. For absence of such short period, punishment of dismissal imposed against workman appears disproportionate. The past absence from duty cannot be said to be unauthorized absence. Working days of workman shows 111 ½ days in 1990, 152 days in 1991, 70 days in 1992, 31 days in 1993 were not part of the charges and therefore the punishment of dismissal imposed against workman is illegal. Therefore I record my finding in Point No.2 in Negative.

8. Point No.3- The proved misconduct of Ist party workman is for a period of about one month 3 days. The punishment of dismissal is found shockingly disproportionate. Considering the nature of proved charge and length of service of workman, punishment of dismissal need to be modified to compulsory retirement. Accordingly I record my finding in Point No.3.

9. In the result, award is passed as under:-

- (1) The action of the Manager, Nandan Mine No. 1 of WCL, PO Nandan, Distt. Chhindwara (MP) in terminating the services of Shri Gunaram S/o Gopal, General Mazdoor of Nandan Mine No.1 is not legal and proper.
- (2) The punishment of dismissal imposed on Ist party workman is modified to compulsory retirement.
- (3) 2nd party is directed to allow retiral benefits to workman as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 461.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 75/04) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-22012/304/2003-आईआर (सीएम-II)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 461.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 75/04) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of South Eastern Coalfields Limited and their workmen, received by the Central Government on 20.02.2017.

[No. L-22012/304/2003-IR (CM-II)]

M. K. SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/75/04

Shri K.N. Trivedi, President,
Rashtriya Koyla Khadan Mazdoor Sangh (INTUC),
Qr.No. B/21, Indira Vihar,
Seepat Road, Korba (CG)

...Workman/Union

Versus

Chairman Cum Managing Director,
SECL, Seepat Road, Bilaspur

Chief General Manager,
SECL, Gevra Area, PO Gevra Project,
Korba (CG)

Dy. General Manager,
SECL, Dipika Expansion Project,
Po Gevra Project,
Korba CG.

...Management

AWARD

Passed on this 17th day of January, 2017

1. As per letter dated 23-6-04 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/304/2003-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of SECL Hqrs, Bilaspur(Chhattisgarh) in not providing pay protection to 58 clerks Grade III w.e.f. the date of their promotion as Clerk Grade III is legal and justified? If not, to what relief the workmen are entitled to?”

2. After receiving reference, notices were issued to the parties. Statement of claim is filed by RKKMS Union at page 2/1 to 2/2. Case of Union is that workmen referred in the list with order of reference have put in service in clerical grade during the years mentioned against their names. As per the requirement of management, all the workmen were getting more wages before they were engaged in clerical grade after promotion. That some workmen who worked in clerical grade got pay protection. Ist party mentioned in the list were deprived benefit of pay protection. Union raised dispute. Union had also called strike. Thereafter the agreement was reached between Union and management on 1-2-97 that the workman working in clerical cadre or other work would be given pay protection. Management of SECL in

different areas acted in arbitrary manner. In the matter of benefit of pay protection, the action of management is discriminatory. Workmen connected with the dispute were not given benefit of pay protection after their promotions. Management violated provisions of ID Act and engaged in unfair labour practice. On such ground, 1st party Union prays for benefit of pay protection and difference of wages for all 58 workers shown in the list with order of reference.

3. 2nd party management filed Written Statement at Page 17/1 to 17/11 opposing claim of workman. 2nd party raised preliminary objection that dispute raised against Chairman-cum-Managing Director of SECL is not tenable. CMD is not necessary party. Dispute raised by RKKMS Union for pay protection of 58 employees. Shri Trivedi has no locus standi to raise the dispute. The dispute raised by Shri K.N.Trivedi is without authority. That management filed application under Section 36 of ID Act contending that Trivedi is not office bearer of Union, he has no locus to represent the Union. Section 36 of ID Act is reproduced. It is reiterated that Shri K.N.Trivedi has no locus standi to raise the dispute. That management received letter from General Secretary of Indian National Workers Federation, Central Trade Union (INTUC). That Shri K.N.Trivedi is no more office bearer. The Chief General Manager, SECL, Bilaspur issued circular No. 341 dated 28-4-89 to all Personal Managers. That RKKMS has amalgamated RCWF. New Union Rashtriya Colliery Mazdoor Congress, Bilaspur was found in the year 2003. After amalgamation of RKKMS with RCWF, election of newly formed Union was held on 22-8-03. The certified copy of registered office bearer of the Union is produced. That Shri K.N.Trivedi is neither President or office bearer of Union.

4. It is further submitted that Shri K.N.Trivedi fully aggrieved by order of Registrar of Trade Union Shri K.M.Trivedi filed Writ Petition No. 927/03 in Chhattisgarh High Court. Said Writ Petition is pending.

5. It is further submitted that SECL is a company registered under Company's Act. Terms and conditions of employees working in coal industry are covered by various settlements known as NCWA. The cadre schemes have been formulated. The matter of promotion channels for all cadres. The promotion is given on recommendation of DPC subject to availability of sanction post. There is no cadre scheme for career growth of employees working in general category. As and when vacancies arose for different posts, appointment is granted to those eligible employees deployed in General Mazdoor category. Management invited applications from eligible candidates including departmental candidates when the vacancy arose. The persons desiring for selection are considered by the departmental promotion committee. The departmental candidates assumes their new assignment and get their carrier growth. The persons who have been selected to the new assignment may be at loss at the initial stage but they have a bright carrier growth in future. Looking to the said carrier growth, the existing employees apply for selection to other cadre such as clerical cadre, mining supervisory cadre etc. It is reiterated that candidates selected to such different cadre. There is no question of protection of their pay. The provisions under NCWA, standing orders not provide pay protection to such selected employees. As the workman gained experience of work of clerk, they were selected to the post of Clerk Grade III by Selection Committee and appointed as clerk Grade III. The Gevra Area management vide letter dated 4-10-97 sought clarification from headquarter of SECL in the matter of pay protection vide letter dated 10-10-97 headquarter clarified that employees working in the post of General Mazdoor Category I, II selected for post of Clerk Grade III should be paid wage of clerk Grade III, they are not eligible for pay protection. 2nd party has also referred to judgments in R/79/94, Writ Petition No. 828/97 in case between Makhanlal versus SECL. Claim for pay protection was not allowed. 2nd party reiterates that on selection to the post of Clerk Grade III, employees were free to join or not to join new assignment. Workman chosen to enter clerk cadre. They are free to go back to their original post. That until and unless particulars of employees to whom pay protection was given is disclosed, management is unable to offer its comments. That promotion is given according to the policy. Management cannot grant illegal claim of the employees. Union has not disclosed names of employees to whom benefit of pay protection was allowed to the employees after their selection. On such ground, 2nd party submits that reference be answered in its favour.

6. Union filed additional statement of claim reiterating his claim for pay protection.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of SECL Hqrs, Bilaspur(Chhattisgarh) in not providing pay protection to 58 clerks Grade III w.e.f. the date of their promotion as Clerk Grade III is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workmen are not entitled to any relief.

REASONS

8. The perusal of record shows that objection was taken by management to locus standi of Shri Trivedi on the ground that he was not office bearer of RKKMS Union. As per ordersheet dated 23-8-07, Shri Trivedi was directed to file documents requested as per Paper No.13. Management was directed to file Written Statement. Written Statement was filed on 21-2-08, rejoinder was filed by Ist party on 25-5-08 then case was fixed for evidence of Ist party on 20-4-2011. Ist party failed to file evidence. It appears that evidence of Ist party was closed on 15-3-2012. Then case was fixed for evidence of management. Ist party has failed to adduce evidence in support of his claim. Ist party has produced documents Exhibit W-1 certificate dated 3-9-94 inviting applications for post of clerk Grade III, W-2 is order of appointment of one Rajendra Singh dated 2-7-02. The condition is clear that pay protection to Clerk Grade III was restricted to the pay scale of deemed to Clerk Grade III. Similar condition is found in Exhibit W-3 appointment letter of Ramayan Metam. Exhibit W-4 is appointment letter of Shri Dilip, Suresh and Prasad on probation of six months. Exhibit W-5 is statement of fixation of Suresh Kumar Soni on post of clerk Grade III pay Scale Rs.1095-37-1613. The pay fixed to the promotion post Rs.1243/- . Exhibit W-6 is letter dated 3-1-95 prohibiting engagement of daily rated employees to clerical jobs. Such persons be immediately reverted back. Exhibit W-7 is letter dated 11-10-94 directing no employees other than those the employees mentioned be engaged in clerical jobs violation would result in serious disciplinary action. Exhibit W-8 is letter dated 13-11-2001 Dukhiram Kol Behra General Mazdoor was appointed as peon. Exhibit W-9 is order of promotion of 5 general mazdoor as peon. Exhibit W-10 is office order of promotion of S.Murthy, Turner Category IV selected as Store Issue Clerk Grade III on probation of six months. The order is silent about pay protection. Exhibit W-11 is order dated 22-1-2003 promotion of 10 employees on probation of six months. The order is silent about pay protection. Exhibit W-12 is order of selection of 4 employees from Category I to clerk(T) order is silent about pay protection. Copy of order dated 14-5-95 is produced is not legible.

9. Management filed affidavit of evidence of Shri Sanjay Kumar Das supporting whole contentions in Written Statement filed by management. Witness of management has stated that on selection of employees in different cadre for which they voluntarily agreed, no pay protection is granted. From evidence of management's witness document M-1 to M-13 are admitted in evidence. In cross-examination of management's witness, he says that pay of daily wage employees is fixed as per NCWA daily wage Employees appointed in Clerk Grade, pay protection is not given. There is no provision for giving pay protection to such employees.

10. The documents Exhibit M-5, 6/1 to 6/15 pertains to biodata/ particulars of the employees. Exhibit M-7 to 9 are office order. Exhibit M-10 is list of employees working in various categories, the particulars are given. Exhibit M-1 is list of employees appointed as Clerk Grade III, M-12 is recommendation of DPC dated 10-4-95. Exhibit M-13 is office order dated 4-5-95 appointing clerk Grade III on recommendation of DP.

11. Ist party has not produced agreement dated 1-12-97 in support of its claim for pay protection, Ist party failed to adduce any evidence. Case was fixed for argument on -10-2015, 21-12-2015, 10-3-2016, 31-5-2016. Ist party remained absent again, case was fixed for argument on 4-7-2016, Ist party requested adjournment. Case was adjourned for argument on application of Ist party on 18-7-2016, 4-8-16. Ist party remained absent on 27-9-16, 16-09-16, 10-1-17. Ist party has not shown interest in arguing the matter. The argument for counsel for management were heard. Learned counsel for management Shri A.K.Shashi reiterates that there was no provision of pay protection to the employees appointed to clerk cadre. No such evidence is also produced by Ist party.

12. Learned counsel for 2nd party pointed out my attention to award in R/76/04, R/79/04. Claim for pay protection was not accepted. For reasons discussed above, I record my finding in Point No. in Affirmative.

13. In the result, award is passed as under:-

- (1) The action of the management of SECL Hqrs, Bilaspur (Chhattisgarh) in not providing pay protection to 58 clerks Grade III w.e.f. the date of their promotion as Clerk Grade III is legal and justified.
- (2) Workmen are not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 462.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 174/03) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-22012/304/2002-आईआर (सीएम-II)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 462.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 174/03) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of South Eastern Coalfields Limited and their workmen, received by the Central Government on 20.02.2017.

[No. L-22012/304/2002-IR (CM-II)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/174/03

Shri Amar Sai,
S/o Shri Sitaram,
Vill Lataria, PO Biltukri,
Thana Kotma, Distt. Shahdol (MP)

...Workman

Versus

Chief General Manager,
South Eastern Coalfields Ltd.,
Hasdeo Area,
PO South Jharkhand Colliery,
Distt. Korea,
Chhattisgarh

Sub-Area Manager,
Bijuri Sub-Area of SECL,
PO Bijuri, Distt. Shahdol (MP)

...Management

AWARD

Passed on this 6th day of January, 2017

1. As per letter dated 16-10-2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/304/2002-IR(CM-II). The dispute under reference relates to:

“Whether the action of the Sub-Area Manager, Bijuri Sub Area of Hasdeo Area of SECL in terminating the services of Shri Amar Sai S/o Shri Sitaram, Dresser w.e.f. 29-1-02 is legal and justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. 1st party filed statement of claim at Page 2/1 to 2/4. Case of workman is that he was working in Bijuri mines in SECL Area, Hasdeo Area. He was illegally terminated from service on 29-1-02. Order of his termination is illegal. Chargesheet was issued to workman on 3-7-01. Workman had submitted reply to the chargesheet. Without considering his reply, management conducted enquiry and illegally terminated the workman. Enquiry was falsely conducted against him. Enquiry was not conducted following proper procedure. Workman was not given opportunity of defence representative. Without examining material witnesses, enquiry was completed. Workman had produced documents in Enquiry Proceedings. Management was not providing work. Workman was not properly treated. Enquiry Officer neglected those aspects. Management Representative did not sign Enquiry Proceedings. The farsh of enquiry was made. Enquiry Proceedings was not properly written. Some portion of Enquiry Proceeding was not legible. Workman raised dispute before ALC. Management not co-operated in settling the dispute. The dispute has been referred to Government for adjudication. Workman prays for his reinstatement with consequential benefits.

3. Management of 2nd party filed Written Statement at Page 5/1 to 5/4 opposing claim of workman. 2nd party submits that SECL is established under Company's Act. SECL is operating through various offices and carries work of coal production. 1st party workman was working in Bijuri mines of Hasdeo Area underground. He remained absent without intimation from 26-2-01. Chargesheet was issued to workman under clause 26.30 of standing order. Workman was found guilty of said misconduct by Enquiry Officer Shri P.K.Nagar. Shri J.K.Prasad was management representative. Workman was given opportunity of defence representative but declined to take his help. Enquiry Officer submitted his report on 30-10-01 holding workman guilty. Showcause notice was issued to workman, reply

given by workman dated 17-12-01 was found not satisfactory. Working days of workman in 1998 were 71 days, in 1999 were 81 days, in 2000 was 79 days. Workman was issued showcause notice. Workman admitted his guilt and requested to be excused. 2nd party reiterates that after conducting enquiry, charges alleged against workman for unauthorized absence are proved. Punishment of dismissal imposed against workman is legal. The attendance of workman during past 3 years was very poor. Workman was avoiding duties. On such ground, 2nd party prays claim of workman be rejected.

4. As per order dated 28-1-94, enquiry conducted against workman is found proper and legal.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

6. Point No.1- Vide order dated 28-1-2014, enquiry conducted against workman is found proper and legal. Question whether charges alleged against workman are proved or not needs to be decided from Enquiry Proceedings. Exhibit M-1 is copy of certified standing order. Clause 26.30 covers misconduct of unauthorised absence. Exhibit M-2 is application submitted by workman. Exhibit M-3 application submitted to ALC, Shahdol. Chargesheet is Exhibit W-1 pertains to unauthorised absence under clause 26.30 of standing order. Enquiry Proceedings produced at Exhibit W-4. Evidence of Muhan Miya recorded in Enquiry Proceeding shows Ist party workman was absent from 26-2-01. Statement of said witness doesnot show till what period the workman was absent. Statement of workman was recorded in Enquiry Proceedings., workman admitted he had committed mistake not attending duty from 26-2-01. He was suffering from illness. He had once given intimation to the management when workman was asked why he did not received treatment in colliery hospital, workman replied he had committed mistake and he will not repeat the same. In Exhibit W-7 also workman admitted his absence and undertaken not to repeat it again. The evidence of Shri Ramnarayan Pandey, Pananku is also adduced by the management. However whether the charges are proved or not requires to be decided from Enquiry Proceedings itself in view of proviso to Section 11-A. The evidence of other witnesses of management cannot be considered for deciding the charges. Evidence in Enquiry Proceedings discussed above proves charges against workman. For above reasons, I record my finding in Point No.1 in Affirmative.

7. Point No.2- In view of my finding in Point No.1 charge against workman of unauthorized absence is proved, question remains for consideration is whether punishment of dismissal imposed against workman is legal. Workman filed affidavit of his evidence that he was terminated in pursuance of enquiry conducted against him. In reply, he is not literate, he doesnot know what is written in his affidavit of his evidence. The chargesheet issued for unauthorized absence of workman from 26-2-01 , chargesheet was issued on 3-7-01. Even if the said period is considered, the period of absence of workman comes about 4 ½ months. Considering short period of unauthorised absence, punishment of dismissal imposed against workman appears harsh and illegal. In my considered view, punishment of dismissal deserves to be modified to compulsory retirement. Accordingly I record my finding in Point No.2.

8. In the result, award is passed as under:-

- (1) The action of the management SECL in terminating the services of Shri Amar Sai S/o Shri Sitaram, Dresser w.e.f. 29-1-02 is not legal.
- (2) Punishment of dismissal imposed against workman is modified to compulsory retirement.
- (3) Management is directed to pay retiral benefit to workman as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 463.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 48/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-22012/243/2005-आईआर (सीएम-II)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 463.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 48/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of M/s. ECL and their workmen, received by the Central Government on 20.02.2017.

[No. L-22012/243/2005-IR (CM-II)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 48 OF 2006

PARTIES :

The management of M/s. ECL, North Searsole Colliery

Vs.

Shri Ramabatar Bhuia

REPRESENTATIVES:

For the management : Sri P. K. Goswami, Learned Advocate

For the union (Workman) : Sri S. K. Pandey, Representative

Industry : Coal

State : West Bengal

Dated : 19.01.2017

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **NO. L-22012/243/2005-IR(CM-II)** dated 03.08.2006 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDEULE

“Whether the action of the management of M/s. E.C.L., North Searsole Colliery in dismissing Shri Ramabatar Bhuiya, U G. Loader from service w.e.f. 16.02.2004 is legal and justified? If not, to what relief the concerned workman is entitled?”

- Having received the Order **NO. L-22012/243/2005-IR (CM-II)** dated 03.08.2006 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. **48 of 2006** was registered on 14.08.2006 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.
- Case called out. None appears on behalf of the management. Sri S. K. Pandey, representative of the workman appears and submits that the workman does not want to contest the case any more.
- On perusal of the case record it is found that the case is about 10 years old- of the year 2006. I also find that the representative of the workman has endorsed his remarks on the order sheet to the effect that the case may be closed as he does not want to continue this case.
- As such the case is closed and accordingly a ‘**No Dispute Award**’ is hereby passed.

ORDER

Let an "Award" be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 464.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 113/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-22012/381/2004-आईआर (सीएम-II)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 464.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 113/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of M/s. ECL and their workmen, received by the Central Government on 20.02.2017.

[No. L-22012/381/2004-IR (CM-II)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL**

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 113 OF 2005

PARTIES :

The management of Amritnagar Colliery M/s. ECL

Vs.

Shri Kartik Hazam

REPRESENTATIVES:

For the management : Sri P. K. Das, Learned Advocate

For the union (Workman) : Sri H. L. Soni, Secretary

Industry : Coal State : West Bengal

Dated : 06.01.2017

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **NO. L-22012/381/2004-IR(CM-II)** dated 17.08.2005 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDE

"Whether the action of the management of Amritnagar Colliery in dismissing services of Sh. Kartik Hazam, Chain Khalasi w.e.f.02.10.1997 is legal and justified? If not, to what relief the concerned workman is entitled to and from which date?"

1. Having received the Order **NO. L-22012/381/2004-IR(CM-II)** dated 17.08.2005 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. **113 of 2005** was registered on 09.09.2005 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written

statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

2. Case called out. Sri P. K. Das, Learned Advocate appears on behalf of the management. None appears on behalf of the union/workman.

3. On perusal of the case record it is found that after 03.09.2009 none appeared before the court to represent the workman/union. 41 dates have been granted thereafter and 3 notices have been issued but all in vain. It seems that neither the workman nor the union is now interested to proceed with the case further. The case is also very old – of the year 2005.

4. As such the case is closed and accordingly a '**No Dispute Award**' is hereby passed.

ORDER

Let an "Award" be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 465.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 82/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-22012/34/2006-आईआर (सीएम-II)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 465.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 82/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of M/s. ECL and their workmen, received by the Central Government on 20.02.2017.

[No. L-22012/34/2006-IR (CM-II)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 82 OF 2006

PARTIES :

The management of Shankarpur Colliery under Bankola Area of M/s. ECL

Vs.

Sri Rajendra Bhuia

REPRESENTATIVES:

For the management : Sri P. K. Goswami, Learned Advocate

For the union (Workman) : Sri Rakesh Kumar, President

Industry : Coal

State : West Bengal

Dated : 12.01.2017

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **No. L-22012/34/2006-IR(CM-II)** dated 30.10.2006 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDELE

“Whether the action of the management of Shankarpur Colliery under Bankola Area of M/s. Eastern Coalfields Limited in dismissing Sri Rajendra Bhuiya from services w.e.f. 8.7.2003 is legal and justified? If not, to what relief the concerned workman is entitled?”

1. Having received the Order **NO. L-22012/34/2006-IR(CM-II)** dated 30.10.2006 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. **82 of 2006** was registered on 11.12.2006 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.
2. Case called out. Sri P. K. Goswami, Learned Advocate appears on behalf of the management. Sri Rakesh Kumar, President of the Union appears on behalf of the workman.
3. Letter **No. SKP/PNL/41/016/46** has been returned to Sri Rakesh Kumar, President of the Union as the terms of settlement mentioned therein is not acceptable. However, Mr. Rakesh Kumar endorsed a remark on the order sheet to the effect that he does not want to press the case.
4. As such the case is closed and accordingly a ‘**No Dispute Award**’ is hereby passed.

ORDER

Let an “Award” be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 466.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसरस ईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 86/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-22012/109/2006-आईआर (सीएम-II)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 466.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 86/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of M/s. ECL and their workmen, received by the Central Government on 20.02.2017.

[No. L-22012/109/2006-IR (CM-II)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. **86 OF 2006**

PARTIES :

The management of Sangramgarh Colliery of M/s. ECL

Vs.

Shri Hitlal Bouri

REPRESENTATIVES:

For the management : Sri P. K. Das, Learned Advocate
 For the union (Workman) : Sri S. K. Pandey, Representative

Industry : Coal

State : West Bengal

Dated : 13.01.2017

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **NO. L-22012/109/2006 (IR(CM-II))** dated 01.11.2006 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDEULE

“Whether the action of the management of Sangramgarh Colliery of M/s. ECL in dismissing Shri Hitlal Bouri from service w.e.f. 20.5.2000 is legal and justified? If not, to what relief the concerned workman is entitled?”

- Having received the Order **NO. L-22012/109/2006 (IR(CM-II))** dated 01.11.2006 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. **86 of 2006** was registered on 11.12.2006 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.
- Case called out. Sri P. K. Das, Learned Advocate appears on behalf of the management. Sri S. K. Pandey, Representative of the Union appears on behalf of the workman.
- Since the workman has already joined in service, no dispute exists between the parties.
- As such the case is closed and accordingly a ‘**No Dispute Award**’ is hereby passed.

ORDER

Let an “Award” be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 467.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 26/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-22015/75/2009-आईआर (सीएम-II)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 467.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of South Eastern Coalfields Limited and their workmen, received by the Central Government on 20.02.2017.

[No. L-22015/75/2009-IR (CM-II)]

M. K. SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/26/2010

Shri Mohan,
S/o Bishal,
Vill/ PO Urtan,
Distt. Annuppur (MP)

...Workman

Versus

Chief General Manager,
Hasdeo Area of M/s. SECL,
PO Sough Jhagrakhand,
Distt. Korea,
Chhattisgarh

...Management

AWARD

Passed on this 23rd day of January, 2017

1. As per letter dated 2-3-2010 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22015/75/2009-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of M/s. SECL in dismissing Shri Mohan S/o Shri Bishal w.e.f. 22-4-06 is legal and justified? To what relief is the claimant entitled for?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim. The case of Ist party workman is that he is illiterate. He was appointed in Ramnagar RO colliery as piece rated labour. He remained absent from work because of his illness. Intimation about his illness was given to the management. During Enquiry Proceeding, he had explained about his illness for absence from duty. He had given reply to the 2nd showcause notice requesting management to refer him to Medical Board. That because of his physical inability and illness of TB, BP suffering since long, he was unable to work. Without giving opportunity of examination by Medical Board, he was terminated from service. His absence from duty was not deliberate. He was not given proper treatment and secondly he was unable to perform his duty. Workman has reiterated that he was not referred to the Medical Board. His services have been terminated illegally caused injustice to him. Termination of his services is illegal. On such ground, he prays for his reinstatement in service.

3. After statement of claim was filed by workman, he died during pendency, his LRs are brought on record.

4. Management filed written statement opposing claim of workman. That after death of deceased workman, LRs adopted statement of claim filed by deceased workman. That deceased workman was habitual absent., the details of his attendance are given 30 days in 2000, nil in 2001, 2002, 139 days in 2003, 78 days in 2004. Chargesheet No. 292 dated 18-3-05 was issued to workman for long and habitual absence under clause 26.24,26.30 of standing orders. The deceased workman had submitted reply to chargesheet. The reply was found unsatisfactory. Shri P.K.Sharma Mine Suptd. Was appointed as Enquiry Officer, Tripathi was appointed as management representative. Enquiry was fixed on various dates, details given in Para 7 of Written Statement. Workman did not appear in enquiry on 4-8-05, 13-8-05, 15-9-05. Enquiry was fixed on 20-9-05. Workman remained absent, enquiry was proceeded ex parte against him. Management's Representative adduced oral and documentary evidence. Enquiry Officer submitted his finding holding workman guilty. Workman did not participate in enquiry. Showcause notice was issued to workman on 9-10-05. Workman submitted reply on 1-11-05, notice was served on workman on 8-2-06 by RPAD. Reply of workman was received on 22-2-06 narrating all the details. Workman was given one more opportunity. The services of Ist party were terminated on 22-4-06.

5. 2nd party submits that coal industry provides medical facility. The dispensaries and hospitals at colliery level are provided. Medical facilities of specialized hospital are provided in serious cases. It is reiterated that the workman remained habitual absence. The charges are proved. Termination of services of workman is legal. 2nd party submits that reference be answered in its favour.

6. As per order dated 9-9-15, enquiry conducted against workman was found legal.

7. Considering pleadings on record and order on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the charges alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Negative
(ii) If not, what relief the workman is entitled to?”	As per final order.

REASONS

8. Term of reference pertains to legality of termination of services of workman. Enquiry conducted against workman is found legal as per order dated 7-9-15, question remains whether charges are proved from evidence in Enquiry Proceedings. Chargesheet is produced at Exhibit M-1. The absence of workman is shown from 3-9-04 till issuing chargesheet on 18-3-05. Period of absence comes about 6 ½ months past attendance is shown in the chargesheet 2002- nil, in 2003-139, in 2004-78. Exhibit M-2 is reply given to chargesheet. Workman has explained his absence from duty on ground of illness. Exhibit M-3 are postal receipts. M-4 is copy of medical card of Manendragarh Central Hospital. The period of treatment is shown 6-10-03 to 4-0-03. In Exhibit M-5 medical card period of treatment is shown 13-7-04 to 20-7-04. In Exhibit M-6, workman was under treatment from 1-11-05 to 15-4-06. Exhibit M-7 is medical card of Hasdeo Area shows workman was receiving treatment during the period 12-10-03, 9-11-03, 12-12-04. Exhibit M-8 to 12 are memos of enquiry. Exhibit M-13 is postal acknowledgement. In Enquiry Proceeding Exhibit M-23, reference of issue memos of enquiry to workman are narrated. In his statement, management representative has stated workman was absent from 3-9-04 till chargesheet was issued. Management representative has also stated about the working days of Ist party in the year 2002-nil, in 2003-43 and in 2004-78 days. Enquiry report is submitted at Exhibit M-24. The details of the duty period are given in Exhibit M-25. Exhibit M-14 is 2nd showcause notice, M-15 is postal acknowledgement. M-16, 17 & 18 are memos of enquiry and postal acknowledgements. In Exhibit M-19, workman in his reply claimed examination through Medical Board. In Exhibit M-20, Mines Suptd had also informed workman for producing documents for medical board. The record of enquiry shows workman has not denied his absence rather he explained reason about his absence was because of illness. Evidence in enquiry is sufficient to prove the charges against workman. Workman died during pendency, his LRs Hetram and Laxmibai are brought on record. Their evidence is mostly devoted about illness of deceased workman. Considering evidence in Enquiry Proceedings and absence from duty was not denied by workman, though explanation was given by workman, deceased workman has not submitted application for leave, as such his absence remained unauthorized. He was also absent for long period during year 2002,03,04 which proves charge of habitual absence. For above reasons, I record my finding in Point No.1 in Affirmative.

9. Point No.2- In view of my finding in Point No. charges of unauthorized and habitual absence are proved against workman, question remains for consideration whether punishment of dismissal imposed against workman is legal. The period of absence shown in chargesheet is about 6 ½ months. Workman had produced documents about his treatment in colliery hospital during the year 2003-04, 04-05 at Exhibit M-4 to 7. Without considering those documents, deceased workman was suffering from illness, punishment of dismissal has been imposed. Documents Exhibit M-4 to 7 clearly shows deceased workman was suffering from illness during the period 6-10-03 onwards. Absence from duty was because of illness of workman. The punishment of dismissal is not justified. Only because workman has failed to submit application for medical leave, his absence from duty has become unauthorised. Workman has not disclosed his length of service neither the management has disclosed how many year of service workman has put. In my considered view, punishment of dismissal deserves to be modified to compulsory retirement. Accordingly I hold and record my finding in Point No.2.

10. In the result, award is passed as under:-

- (1) The action of the management of M/s. SECL in dismissing Shri Mohan S/o Shri Bishal w.e.f. 22-4-06 is not legal.
- (2) Punishment of dismissal is modified to compulsory retirement.
- (3) Management is directed to give retirement benefits to widow of deceased workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 468.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 60/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-22012/388/99-आईआर (सीएम-II)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 468.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 60/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Western Coalfields Limited and their workmen, received by the Central Government on 20.02.2017.

[No. L-22012/388/99-IR (CM-II)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/60/2000

The President,
Coal Mines Engineering Workers Association,
PO Palachourai,
Distt. Chhindwara

...Workman/Union

Versus

General Manager,
Kanhan Area, M/s. Western Coalfields Ltd.,
PO Dungaria,
Distt. Chhindwara

...Management

AWARD

Passed on this 16th day of December, 2016

1. As per letter dated 10-20/2/2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/388/99-IR(CM-II). The dispute under reference relates to:

“Whether the action of the Manager, Ambara colliery of WCL, PO Ambara, Distt. Chhindwara (MP) in dismissing the services of Shri Juggar Sha S/o Mangal Singh, Timber Mazdoor of Ambara colliery is legal and justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. 1st party workman submitted statement of claim through Coal Mine Engineering Workers Association. Case of 1st party workman is chargesheet was issued to him by management for unauthorised absence for the period 6-10-95 to 20-1-96. 1st party workman contends that the absence of 1st party workman can be ascertained from the Attendance Register. Workman had asked particulars as to who had submitted complaint about his unauthorized absence. When workman had submitted application for joining duty, chargesheet was issued to him. Workman was allowed to join duty after long time of issuing chargesheet. At the time of submitting joining report, workman submitted explanation for his absence from duty and requested to be excused. Workman had received local treatment. Chargesheet was issued to workman about his unauthorized absence. Workman was not allowed to join duty for long time only after giving permission for joining duty, chargesheet was issued to him. Chargesheet issued to workman for unauthorized absence for major misconduct is not proper. As per standing orders, minor and major punishments are provided. For the alleged misconduct of unauthorized absence, punishment of dismissal against workman is not legal. Copy of Enquiry Report was not supplied to him. Appointment of Enquiry Officer was made without giving opportunity to the workman is illegal. Workman was not informed as to who was the Appellate authority, as such he was denied opportunity for filing appeal against order of punishment. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed written statement opposing claim of workman. 2nd party submits that Government has made reference is not legal. The dispute is raised by Mine engineering Workers Association has no locus to raise the dispute as workman is not its member. Said Union is not covered under Industrial Relation system of the company. The dispute is raised after 3 years is not tenable. It is further contented that workman was in habit of remaining unauthorized absent . he was remaining absent without intimation, prior sanctioned leave. He was given ample opportunity to improve. Chargesheet was issued to workman for his absence for the period 6-10-95 to 20-2-96. Reply was submitted by workman on 22-1-96. Reply was found unsatisfactory by the management. Enquiry Officer S.Gandhi and Management Representative S.P.Soni were appointed for conducting the enquiry w.r.t. chargesheet issued to the workman. Enquiry Officer fixed enquiry on various dates. 1st party workman participate in enquiry. Enquiry Officer

read out the charges. Workman admitted charges against him. Workman was allowed assistance of co-worker but he did not avail the same. The workman submitted before Enquiry Officer that he could not report for duty as he was sick at his native place. Medical Report by Ayurvedic Doctor was submitted by workman. Management's Representative produced various documents such as bonus register, leave register etc.w.r.t. workman. Enquiry Officer closed enquiry and submitted his report holding workman guilty for unauthorized absence. The Competent Authority satisfying that enquiry was conducted following principles of natural justice and giving opportunity for defence to the workman imposed punishment of dismissal on 21-6-96.

4. 2nd party further submits that the punishment of dismissal imposed against workman is legal. The absence of employees in coal industry causes loss of production and administrative inconvenience needs to be firmly lead. Under guise of sympathy, such misconduct should not be compromised. Workman does not deserve sympathy for grave misconduct committed by him. If enquiry is found vitiated for any reason, management requests permission to prove misconduct adducing evidence. Management reiterates that the Union has no locus standi. Workman was unauthorisely absent for the period 6-10-95 to 20-1-96. It is irrelevant that workman sought promotion to resume duty on receipt of chargesheet. It is submitted that chargesheet was rightly issued to the workman. Charges are proved. Punishment of dismissal is proper. Claim of workman deserves to be rejected.

5. The standing orders provides for appeal. It is for workman to avail opportunity of appeal or not. On such contentions, 2nd party submits claim of workman be rejected.

6. 1st party workman submitted rejoinder reiterating his contentions in statement of claim. It is submitted that workman is member of CME(WA) Union. Union is authorized to raise the dispute. Workman had not denied charges against him. He not submitted explanation about his absence. Enquiry should not have been conducted.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. At the time of argument, learned counsel for 1st party Shri Soni and Shri A.K.Shashi for management submitted that all issues be decided together. My findings are recorded against each of them for the reasons as below:-

(i) Whether the DE conducted against workman is proper and legal?	In Affirmative
(ii) Whether the management is entitled to prove misconduct of workman?	In view of enquiry is found legal, management is not entitled to prove misconduct alleged against workman.
(iii) To what relief the workman is entitled to?"	As per final order.

REASONS

8. Issue No.1 pertains to legality of enquiry conducted against workman. In his statement of claim, workman has contented that without calling his explanation, Enquiry Officer was appointed. That workman was absent, he was receiving local treatment. Workman has not pleaded specific ground how enquiry conducted against him is vitiated. Chargesheet is issued to workman for unauthorized absence under Clause 26.30 of the standing order. Chargesheet is produced at Exhibit W-2. The chargesheet cannot be said illegal. Workman has not adduced evidence to substantiate his contentions. Evidence of workman was closed on 31-12-2010.

9. Management filed affidavit of evidence of witness Shri Soni. From his evidence, documents of enquiry at Exhibit M-7 are proved. In his cross-examination, management's witness says he did not issue chargesheet to workman. He further says the contents of chargesheet are correct. Management's witness denies that evidence of management's witness was not recorded in Enquiry Proceedings. As workman has failed to adduce evidence about fairness/ legality of enquiry, I record my finding in Point No.1 in Affirmative.

10. Point No.2- In view of my finding in Point No.1 enquiry conducted against workman is legal, management is entitled to prove misconduct by adducing evidence. Issue No.2 is answered accordingly.

11. Point No.3- From evidence of Enquiry Proceedings, it is clear that workman had admitted his absence from duty during the period 6-10-95 to 20-1-96. Workman had explained that he remained absent as he was receiving treatment. He submitted certificate from Ayurvedic Medical Officer. Said certificate is also produced in the Enquiry Proceedings. The explanation given by workman before Enquiry Officer is silent that he had submitted any application for leave. Enquiry Officer submitted his report. As workman admitted his absence from duty, charges were proved. Punishment of dismissal of workman has been imposed. 1st party has produced documents Exhibit W-1- copy of certified standing orders. Exhibit W-4 is order of punishment of dismissal imposed against workman. The attendance

sheet of Ist party workman was produced in enquiry shows working days of workman 79 days in 1992, 67 days in 1993, 133 days in 1994, 74 days in 1995. Less number of working days itself could not be said workman was unauthorisely absent for remaining days. Management also produced copy of certified standing orders at Exhibit M-5. Evidence in Enquiry Proceedings shows workman was absent from duty for 4 months and 10 days. Workman had submitted explanation about his illness. Disciplinary Authority did not consider his explanation. Therefore punishment of dismissal imposed against workman for absence appears shockingly disproportionate. In my considered view, considering evidence and facts of the case without considering length of service of workman, punishment of dismissal is not proper. It deserves to be modified to punishment of compulsory retirement. Accordingly I hold.

12. In the result, award is passed as under:-

- (1) The action of the management dismissing the services of Shri Juggar Sha S/o Mangal Singh, Timber Mazdoor of Ambara colliery is not legal.
- (2) Punishment of dismissal is modified to compulsory retirement.
- (3) Management is directed to allow retiral benefits to workman.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 469.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 95/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-22012/148/91-आईआर (सीएम-II)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 469.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 95/93) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of M/s. South Eastern Coalfields Limited and their workmen, received by the Central Government on 20.02.2017.

[No. L-22012/148/91-IR (CM-II)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/95/93

Secretary,
Rashtriya Koyla Khadan Mazdoor Sangh,
PO Nowrozabad Colliery,
Distt. Shahdol (MP)

...Workmen/Union

Versus

General Manager,
Johilla Area of SECL,
PO Nowrozabad Colliery,
Distt. Shahdol (MP)

Project Manager,
MECL, Pinora Project,
PO Birsinghpur Colliery,
Distt Shahdol (MP)

...Management

AWARD

Passed on this 9th day of November 2016

1. As per letter dated 29-4-93 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/148/91-IR(C-II). The dispute under reference relates to:

“Whether the action of the management of South Eastern Coalfields Ltd., Johilla Area in not regularizing 118 workers (as per list attached) on the roll of General Manager, Johilla Area of SECL is legal and justified? If not, to what relief the concerned workers are entitled to?”

2. After receiving reference, notices were issued to the parties. Statement of claim is submitted by National Colliery Workers Federation, SECL, Johilla Area at page 2/1 to 2/4. Case of Ist party Union is that earlier the dispute in question was raised by RKKMS, subsequently the employee decided not to be represented by said Union. They given in writing that they intend to be represented through National Colliery Workers Federation. The authorization received in favour of applicant Union is relied. Ist party Union submits that it is registered under Trade Union Act, 1926. It is competent to have membership among the employee employed in the mine. That all 111 workmen were employed through contractor. 2nd party No.2 MECL the names of all those employees are mentioned in the list attached with the terms of reference. All the employees were employed for executing the work shown in the list. All employees are members of Union. They were working at Pinoura Project. That during course of their employment shown in list, PF and nomination forms were obtained from them. Employees were treated as employees of 2nd party No.1. Therefore the employees were made members of PF obtaining their nomination forms. All 118 employees were employed for executing the work of 2nd party No. SECL. As such 2nd party No.1 is Principal Employer. The liability of contractor's workers has to be fastened on 2nd party No.1. workmen shown in the list had completed more than 2 years continuous employment with Principal Employer and 2nd party No.2. they were entitled to be regularized departmentally with 2nd party No.1 SECL.

3. Ist party Union further contends that infact the job which was being performed by 118 workers through contractor for 2nd party No1. Said work should have been performed and undertaken carried out by 2nd party No.1 SECL. 2nd party No.1 with malafide intention employed contractor so that the regularization of 118 workmen could be awarded. That contractor was nothing but a paper arrangement to stop scope of regularization of 118 workers. 2d party No.1 cannot escape liability to regularize those 18 workmen being Principal Employer. That contractors adopted by Non-applicant No.1 to carry out its work through 2nd party No.2 MECL is unfair labour practice. The sole purpose was to avoid regularization of those workmen. Said contracts amounts to victimization and unfair labour practice resulting no exploitation of workers. That 11 workmen have already got sufficient experience for working in mine of 2nd party No.1. they are physically fit to carry out work of physical employer in the mine. They have legitimate claim for regularization as they worked for long 10 years with the contractor. It is further contented that work performed by those 118 workers is of permanent nature. Said work is available with 2nd party No.1. Work is not of casual nature. Paper arrangement through 2nd party No.2 was made in nullity in eye of law. The action of 2nd party No.1 Principal employer not regularizing services of those 118 workmen is illegal. Principal Employer cannot hide from its responsibilities to regularize workmen engaged through contractor. The Court shall have held Principal Employer held solely responsible for regularization w.r.t. workmen engaged through contractor. The denial of regularization of 18 workmen will cause great injustice to them. On such ground, workman prays that 2nd party No.1 be directed to regularize services of 118 workmen.

4. 2nd party filed Written Statement at Page 3/1 to 2/6 opposing claim of Union. 2nd party raised objection that present dispute raised by Union is not tenable. The dispute is sponsored through RKKMS. Said Union has in its resolution had decided not to taken up case through NCWF claimed to be Union. National Colliery is not party to the dispute. Dispute is raised by RKKMS. It has not appeared before the Tribunal, no authorization is filed in favour of NCWF to taken up the dispute. Therefore NCWF is not party to the dispute. It has no locus standi to raise the dispute. The present dispute cannot be taken up by NCWF. 2nd party further submits that workmen concerned with dispute whose names are given in the schedule were never employed by SECL, there was no employer employee relationship between the parties. Management of SECL has awarded same practice to SECL for incline of drivage at Pinoura project. The job was either permanent or permanent in nature. Said job was for a short period. On completion of work, contract comes to end as per the terms of contract. MECL was public sector undertaking having their own system of working. The workers appointed by MECL are concerned for execution of contract working. Management of SECL doesnot have any knowledge about it. The workers are employed by MECL are covered by terms and conditions of employment offered to them by MECL. Since the job awarded in the instant case to MECL is of temporary nature, as is not a permanent perennial nature of job. That job awarded to MECL of incline shaft drivage is not of perennial nature. That SECL is not concerned with termination o regularization of services of the workers. No question of regularization of services of those 18 workers by SECL arise. It is contented only workers employed in regular nature of work by management of SECL can claim regularization. Question of regularization of individuals working with MECL another

public sector awarded temporary contract cannot be a matter of dispute for adjudication. The work of incline shaft drivage has no concerned with mining operation. SECL management cannot have any work to be given to those employees. There is no justification in regularizing workmen. Since job awarded to MECL was temporary in nature, question of regularization or providing permanent job to those individuals does not arise. In parawise reply, 2nd party has reiterated that 1st party NCWF has no locus. All 118 workers were not its employees. There is no employer employee relationship. The liability for regularization is not on 2nd party No.1 as Principal Employer. The job awarded to MECL was not of permanent nature. Workmen concerned with dispute were not employed by it. On such ground, 2nd party prayed that reference be answered in its favour.

5. 1st party Union filed rejoinder at Page 4/ to 4/3 reiterates that initially dispute was raised by RKKMS Nowrozabad. But subsequently they have not come forward to prosecute the dispute under reference. The National Colliery Workers Federation taken up said dispute is not illegal. It has right to prosecute cause of the workers. The workers covered by the reference were employed by MECL contractor. Management of SECL has entered into various agreements with Union for regularizing employees of contractors completing 240 days working. The management passed order dated 16-10-84, 22-6-87, 6-11-90, agreement dated 13-12-84 employed contractor's employees. The employees concerned with dispute under reference employed by the contractor therefore when the work was over, said employees were neither continued or regularized. Management adopted discriminatory attitude. It is reiterated that management should have given similar treatment regularizing workmen engaged through contractor.

6. Application for amendment was filed by 1st party was allowed as per order dated 14-7-95. It appears amendment was not incorporated in statement of claim. Management also filed application for consequential amendment. However said amendment has not been incorporated in the Written Statement filed by 2nd party No.1. Amendment pertains to workers were employed in mining job and specifically prohibited under Contract Labour (Regulation and Abolition)Act 1970 even if management submits that they were engaged through MECL, it is totally illegal and the workers is deemed to be employees of coal mines. Union further submits that indirectly contractors in name of MECL are notified which amounts to unfair labour practice. Management cannot be permitted to get away from such unfair labour practice.

7. Application for incorporating consequential amendment paper No. 8/1 to 8/3 is filed in which 2nd party No.1 SECL has contented the workers discontinued from service in Johilla area as per list enclosed have been engaged in Vindhya Project from 25-7-92 till July 1994. Union raised industrial dispute by filing application under Section 12 of ID Act before Conciliation Officer on 27-8-90. Amendment by Union not considered during course of conciliation therefore the dispute under reference is not tenable.

8. 2nd party No.2 MECL was impleaded, filed Written Statement at Page 15/1 to 15/12. 2nd party No.4 in its Written Statement submits that its office stood closed long back on completion/ closure of the project. That it is registered under Company's Act having headquarter at Nagpur. The corporation is established in 1972. The objects of the corporation are narrated in detail that it is engaged in exploration of mineral resources. The work extracted by contractor is primarily of Government of India. The persons employed in Project/ temporary establishment are employed mainly for project temporarily. Their employment comes to end on completion of project work. Written Statement filed by 2nd party No.2 MECL also refer to during settlement dated 23-2-80, Writ Petition No. 1129/88 filed by Shri Pravin Inchalwar indulged industrial dispute raised before CLC. That one such project of respondent company was taken up for drivage of Pinoura project. Workmen were engaged purely for duration of the project. The job was neither permanent nor perennial in nature. Management of company reiterating workman in accordance with law settling the dues of workman. For aforesaid work, company had obtained licence under Contract Labour Act, 1970. On completion of project, workmen were terminated according to law. No dispute arise. There is no question of payment of NCWA. It is further reiterated that the Ministry of Labour rendered decision that workmen employed by MECL were awarded work of shaft in pinoura project by management of SECL on contract basis, job is not of perennial nature, job is not also covered under Contract Labour (R&A)Act. All adverse contentions of Union have been denied. It is reiterated that the work was not of prohibited category. There is no question of committing unfair labour practice. On such ground, 2nd party No.2 MECL prays that workmen are not entitled to any relief.

9. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below :-

(i) Whether the National Colliery Workers Federation has locus to raise and prosecute the dispute?	National Colliery Workers Federation has no locus to prosecute the dispute under reference. However individual employees could prosecute the reference.
(ii) Whether the action of the management of South Eastern Coalfields Ltd., Johilla Area in not	In Affirmative

regularizing 118 workers (as per list attached) on the roll of General Manager, Johilla Area of SECL is legal and justified?	
(ii) If not, what relief the workman is entitled to?"	Workmen are not entitled to any relief.

REASONS

10. Point No.1 Ist party NCWF filed statement of claim has falsely pleaded that the dispute was raised by RKKMS Union. That it was authorized by colliery workers to prosecute the reference on their behalf. 2nd party No.1 management of SECL has taken objection that the NCWF has no locus to prosecute the dispute under reference. Affidavit of evidence of workers Ramlu Shukla, Sapan Kumar Srivas, Lalu Yadav refers to the dispute was raised by RKKMS Union. Affidavit of evidence of Indrabhan Dwivedi is devoted on the point that dispute was raised by RKKMS Union, he was Vice President of said Union Lateron said Union got bifurcated and merged with NCWF. He was again Vice President of NCWF, workmen also become member of NCWF. Subsequently Union was renamed as RCWF. In his cross-examination, Indrabhan Dwivedi reiterates that he was Vice President of Union since 1980. The dispute was raised by RKKMS Union he was office bearer of said Union. He was Vice President of National Workers Colliery Federation since 1992 to 1995. The merger had not taken place. The litigation about merger of those Union is pending before Hon'ble Chhattisgarh High Court. However he claims ignorance what was point in dispute the membership is enrolled every year. Employees had become members of NCWF in 1992. He shown readiness to produce membership register of Union. However said register is not produced. In his further cross, witness says after merger RCWF was constituted. RCMC was subsequently established around 1998-99. He was Vice President of those Union since beginning. The order of reference finds name of Secretary, Vice President of RKKMS Union as party No.4. Ist party has not produced documents regarding formation of NCWF or the workers had accepted membership of said Union. Document about authorization by the workers to NCWF, management had taken objection to the vakalatnama filed in favour of six candidates. Vide order dated 10-9-13, Shri R.C.Shrivastava Advocate was allowed to participate in reference proceeding after filing vakalatnama. Shri R.C.Shrivastava Advocate on the point relies on ratio held in case between :

M/s. Western India Match Company Ltd versus the Western India Match Company workers Union and others reported in 1970(1)SCC-225. Their Lordship considering services of respondent No.3 had been terminated on 29-5-57, matter was taken by Respondent No.1 before Conciliation Officer. There was no conciliation and the State Government declined to make a reference for adjudication under the UP Industrial Disputes Act, 1947. Respondent No.3 Writ Petition for a mandamus was dismissed by the High Court. The Government by its order dated 28th August 1963 made a reference of the dispute regarding SI.No.3 termination of service of the Labour Court which rejected the reference on the ground that there was no industrial dispute. Writ petition filed by Respondents No. 1 to 3 in the High Court was allowed by a learned Single Judge and this order was confirmed by the Division Bench. Their Lordship held that though a dispute may initially be an individual dispute, the workmen may make that dispute as their own, that is to say, espouse it on the ground that they have a community of interest and are directly and substantially interested in the employment, non employment or conditions of work of the concerned workman.

Considering ratio .held in above case whether the workman was member or not members of NCWF at the time of their disengagement. The individual employees are competent to prosecute the dispute under reference. For reasons discussed above, I held that NCWF Union has no locus to prosecute the reference. However individual employees are competent to prosecute the dispute under reference.

11. Point No.2- the term of reference pertains to denial of regularization of 118 workers as shown in the list attached with the order of reference on roll of General Manager, Johilla Area, SECL. The point raised in the pleadings in the statement of claim is all the 118 workers connected with the dispute were executing work of 2nd party No. 1 SECL. All 118 workers were employed through contractor for purpose of executing the work. That 2nd party No.1 with malafide intention and purposely employed contractor to avoid their regularization those contentions are denied by management in their Written Statement. In application for amendment which had been allowed, it was contented that workers are employed in mining job specifically provided under CL(R&A)Act. The affidavit of evidence filed by Shri Ram Kumar Shukla is devoted on the point that he worked with MECL which was under SECL, Pinoura project from 1989 to Feb1991. That whatever work allotted to him like timberman, loader, dresser etc. used to be done by him. He was paid Rs.30/- per day and allowances by MECL. Since the wages were less and not in accordance with NCWA IV, Union espoused case of all 118 persons. His name was recorded in Form B register of WCL. That it is clear that he was employee of WCL, transferred to SECL. He was not paid retrenchment compensation. Affidavit of Sapan Kumar Srivas Para 2 is clear that he had worked with MECL under SECL from 989 to Feb 1991. Identical affidavit is filed by witness Lalu Yadav. However Indrabhan in his affidavit has stated that workmen were engaged in 1988 and 1989, they continued to work with Non-applicant No.1 till 1992 in Pinoura project. They were shifted to Vindya Project.

Thus workman worked for more than 6 years. The affidavit of witness Indrabhan is not a workman but claims to be Vice President of NCWF.

12. Affidavit filed by Shri Mahesh Prasad Mishra is clear that in 1989, new mine was opened at Pinoura by MECL and he was transferred to Pinoura branch by MECL. Any of the workmen filed affidavit have not claimed that they were employed by 2nd party No.1 SECL, rather they were working with MECL.

13. Shri Ram Kumar Shrivas in his cross says he was working as General Mazdoor. Appointments were made at Pinoura, appointment letter was not received by him. Post was not advertised. As his house is near vicinity of mine, he heard about recruitment being carried, his house is at half km distance from mine. The contents of para 2 of his affidavit are not correct, para 2 of his affidavit pertains to he was working in MECL under SECL in Pinoura Project between 1989 to February 1991.

14. Shri Sapan Kumar in his cross says that his permanent address is from Nowrozabad, he was member of RKKMS Union since last 10 years. The membership contribution as deducted from his salary but he claimed ignorance whether any documents of recovery of membership contribution are produced in the case. In his further cross, he claims ignorance whether the workers concerned with the case were employees of SECL. He claims ignorance whether wages were paid to him by MECL or SECL. He was not called for interview by SECL or WCL. He claims ignorance whether he submitted application to SECL or MECL. He was not called for interview by SECL or MECL. He claims ignorance whether work under project was carried by MECL. Payment was made by the clerk of the project. He was unable to tell name of the clerk. He claims ignorance whether MECL had maintained his service record. Later Shri Yadav in his cross says he was unable to tell whether MECL is private or Government contractor. Payment was made by MECL as per attendance. SECL was marking attendance and MECL has handed over amount for payment to all workers. That he was retrenched by both MECL and SECL. He claims ignorance whether his name was sponsored through Employment Exchange. He not received interview call from SECL or MECL. Similar evidence is found in cross examination of Shri Mahesh Prasad Mishra.

15. Shri Indrabhan in his cross says work of incline shaft drivage of Pinoura project was given by SECL to MECL. The employees were given appointment by MECL. Work was carried during 1988 to 1991. MECL was maintaining attendance. Again he corrected that SECL was also maintaining attendance of the workers. Mining Sirdar was preparing report about the attendance of workers. SECL was also maintaining attendance of workers. He was unable to tell names of time keeper. That his evidence is as per his personal knowledge, he was unable to tell the name of his visit to place of work. Indrabhan in his further cross says that workers were made members of PPF. PPF deduction was made, slip was issued. However any documents about deduction of PPF was not produced on record. Since selection in 991, he was not office bearer of the Union.

16. Ist party filed affidavit of Shri Vijay but not appeared for cross examination therefore his evidence cannot be considered.

17. Ist Party has produced documents at Exhibit W-3 it is notification dated 21-6-88. During course of argument, learned counsel for both parties had no objection to consider said notification. Said notification has been issued under Section 10 of CL(R&A)Act 1970 in suppression of Notification dated 1-2-75. Central Government after consultation with Central Board prohibits employment of contract labour in the work specified in the schedule annexed hereto in all coal mines in the country. The schedule includes- raising or raising cum selling of coal, coal loading and unloading, overburden removal and earth cutting, soft coke manufacturing, driving of stone drifts and miscellaneous stone cutting underground.

18. Affidavit of evidence filed by the workers Ram Kumar, Sapan Kumar, Lalu Yadav, Indrabhan Dwivedi, Mahesh Prasad Mishra do not disclose that they were doing the work of prohibited category rather the affidavit of those workers are on the point that they were doing work allotted to them like timberman, dresser etc.

19. Management has filed affidavit of evidence of witness Arvind Kumar Dixit. From his evidence, documents Exhibit M-1 to M-13 are admitted in evidence. Documents pertain to agreement between MECL and SECL pertaining to work allotted to MECL contractor of incline shaft drivage. From evidence of management's witness Shri Pradeep Kumar Dey, documents Exhibit M-14 to 31 are admitted in evidence. Management's witness Arvind Dixit was not cross examined, his evidence remained unchallenged. In cross examination of management's witness Dey admits that Mine Manager is incharge of work in mines. The record of working in mine remains in custody of Mine Manager.

20. The pleadings of Ist party that workmen were engaged for prohibited category of work is not established from evidence of witnesses of Ist party. Evidence of witnesses of Ist party is not cogent and supported by documents that only 118 workers were working under SECL. Ist party Union has not challenged the documents of agreement established from evidence of management's witness Arvind Kumar Dixit and MW-2 Pradeep Dey. In cross examination of MW-2, there is no suggestion that agreement was not genuine rather as per the documents bills and

certificate of completion of work produced by management, it is clear that work allotted to MECL by SECL under Exhibit M-1 and other documents was carried by MECL. The contractor cannot be said camouflage.

21. It is required to consider the ratio relied by counsel for both parties. On the point Shri R.C.Shrivastava relied on ratio held in case between-

H.D.Singh versus Reserve Bank of India and others reported in air 1986-SC-132. Their Lordship held striking off the name of a workman from the rolls by the employer amounts to termination of service and such termination is retrenchment within the meaning of Section 2(oo) if effected in violation of the mandatory provision contained in Section 25-F and is invalid.

Present case does not pertain to violation of Section 25-F of ID Act rather term of reference pertains to denial of regularization or absorption of workman. Ratio cannot be applied to case at my hand.

In case between Oil and Natural Gas Corporation Ltd. Versus Petroleum Coal Labour Union and others reported in 2015(6)SCC-494. Their Lordship dealing with unfair labour practice and denial of statutory right of regularization duty of PSU as instrumentality of State under Article 12 of constitution to not act arbitrarily or unreasonably being governed by Pt.III of constitution, ONGC certified standing orders if conferring right of regularization if conditions stated therein were satisfied. Their Lordship held workman concerned in facts of the case held entitled to regularization.

In present case, claim of Union is not based for violation of any provisions of the standing orders therefore ratio held in the case cannot be applied to case at hand.

In case between Secretary, HSEB versus Suresh and others reported in 1999(3)SCC-601. Their Lordship dealing with interpretation of statutes held Court must decide in the interest of the public inspired by principles of justice, equity and good conscience. Beneficent construction applied in the context of regulation and abolition of contract labour.

No doubt beneficial consideration is to be applied in such matters. However the core dispute between parties needs to be established by Union that agreement/ contract between SECL and MECL is camouflage. That the workman were engaged for prohibited category of work. On record discussed above, contentions of workman/ Union cannot be established.

22. Learned counsel for 2nd party Shri A.K.Shashi relies on ratio held in case between-

Workmen of Nilgiri Coop. MKT. Society Ltd versus State of TN and others reported in 2004(3)SCC 514. My attention was drawn to para 32,35,37,47,68,94,95 in para 32, their Lordship dealing with determination of relationship observed no decision of this Court has laid down any hard and fast rule nor is it possible to do so. No single test be it control test be it organization or any other test has been held to be the determinative factor for determining the jural relationship of employer and employee.

In para 35, their Lordship observed in a given case it may not be possible to infer that a relationship of employer and employee has come into being only because some persons had been more or less continuously working.

In para 37, their Lordship had laid down relevant factors. It would have bearing on (a) who is appointing authority(b) who is the pay master, (c) who can dismiss, how long alternative service lasts, the extent of control and supervision, the nature of job, nature of establishment, the right to reject.

Ist party has not adduced evidence on any of those points. Considering ratio in the case, Union failed to establish that SECL had engaged the workman.

23. Reliance is also placed in case between 2011-I-LLJ-211, 2009(13)SCC-374, 2009-I-LLJ-241(SC), 2015-I-LLJ-513, 2011(1)SCC-635, 2005(8)SCC750, AIR-2007(SC)1166, 2007-3-LLJ-163. Considering the evidence discussed above, Ist party cannot establish claim of workman, details discussed in all those cases is not necessary. Lastly I may also deal with argument advanced by Shri R.C.Shrivastava that examination of all workers is not necessary. On above point Shri R.C.Shrivastava relied on ratio held in AIR-1952-Nagpur 313. I am also in agreement that examination of all workers is not necessary by Ist party Union. For above reasons, I record my finding in Point No.2 in Affirmative.

24. In the result, award is passed as under:-

- (1) The action of the management of South Eastern Coalfields Ltd., Johilla Area in not regularizing 118 workers (as per list attached) on the roll of General Manager, Johilla Area of SECL is legal and justified.
- (2) Workmen are not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 20 फरवरी, 2017

का.आ. 470.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 71/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.02.2017 को प्राप्त हुआ था।

[सं. एल-22012/216/2006-आईआर (सीएम-II)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th February, 2017

S.O. 470.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 71/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of M/s. ECL and their workmen, received by the Central Government on 20.02.2017.

[No. L-22012/216/2006-IR (CM-II)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 71 OF 2007

PARTIES :

The management of Khas Kajora Colliery under Kajora Area of M/s. ECL

Vs.

Late Jalpari Bagti

REPRESENTATIVES:

For the management : Sri P. K. Das, Learned Advocate

For the union (Workman) : Sri Rakesh Kumar, President of the Union

Industry : Coal

State : West Bengal

Dated : 11.01.2017

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **No. L-22012/216/2006-IR(CM-II)** dated 20.08.2007 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Khas Kajora Colliery under Kajora Area of M/s. ECL in not providing employment to the dependent of Late Jalpari Bagti is legal and justified? If not, to what relief is the dependent concerned entitled?”

1. Having received the Order **No. L-22012/216/2006-IR(CM-II)** dated 28.08.2007 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. **71 of 2007** was registered on 04.09.2007 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

2. Case called out. Sri P. K. Das, Learned Advocate appears on behalf of the management. Rakesh Kumar, President of the Union appears on behalf of the workman.

3. On perusal of the case record it is found that the dependent of the deceased workman has not been attending since long so that the evidence of the workman could not be filed and Sri Rakesh Kumar, President of the Union has

endorsed his remark on the Order Sheet. It is also evident from the case record that the case was fixed for filing evidence of the workman on 07.07.2015. Thereafter 7 dates have been granted but to no effect.

4. As such the case is closed and accordingly a ‘**No Dispute Award**’ is hereby passed.

ORDER

Let an “Award” be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 21 फरवरी, 2017

का.आ. 471.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य ओरगानाईजेशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 121/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.02.2017 को प्राप्त हुआ था।

[सं. एल-41011/48/2013-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 21st February, 2017

S.O. 471.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 121/2013) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Central Organization and their workmen, received by the Central Government on 21.02.2017.

[No. L-41011/48/2013-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 25th November, 2016

Reference: (CGITA) No. 121/2013

The General Manager,
Central Organization,
Railway Electrification, Nawab Yusuf Road,
Nr. Old Loco Shed, P.O. Allahabad (U.P.)

...First Party

V/s

The President,
General Workmen's Union,
Sinduri Mata Devasthan,
S.T. Nagar Road, P.O. Godhra,
Panchmahal – 389001

...Second Party

For the First Party : None

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/48/2013-IR(B-I) dated 26.06.2013 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the Union for giving compassionate appointment to Shri Vikramsinh Raysinh Baria, S/o (Late) Raysinh Manabhai Baria is legal, proper and just? If so, to what relief Shri Vikramsinh Raysinh Baria is entitled to?”

1. The reference dates back to 26.06.2013. Second party, The President, General Workmen's Union, Sinduri Mata Devasthan, S.T. Nagar Road, P.O. Godhra, Panchmahal, failed to submit statement of claim even after a period of more than 3 years. Today on 25.11.2016, the aforesaid second party requested the tribunal to withdraw from the reference.
2. Thus the reference is disposed off as withdrawn and not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 21 फरवरी, 2017

का.आ. 472.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 294/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/3/2000-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 21st February, 2017

S.O. 472.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 294/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 21.02.2017.

[No. L-41012/3/2000-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 2nd December, 2016

Reference: (CGITA) No. 294/2004

1. The Divisional Railway Manager,
Western Railway, Divisional Office,
Kothi Compound, Rajkot (Gujarat) – 360001
2. The Carriage Depot Officer (M.G.),
Western Railway, Gomtipur Yard,
Ahmedabad (Gujarat) ...First Party

V/s

The Divisional Secretary,
Paschim Railway Karmachari Parishad,
E/209, Sarvottam nagar, Nr. New Railway Colony,
Sabarmati,
Ahmedabad (Gujarat) – 380001 ...Second Party

For the First Party : Shri D.C. Khuva

For the Second Party : Shri B.K. Sharma

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41012/3/2000-IR(B-I) dated 24.05.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the Paschim Railway Karmachari Parishad, Ahmedabad against the D.R.M., Western Railway, Rajkot/ Carriage Depot Officer (M.G.), Western Railway, Ahmedabad in issuing charge sheets vide letter dated 02.10.1997, 10.02.1998 and 20.02.1998 is just, valid and legal? If so to what benefit the workman is entitled for and what directions are necessary in the matter?”

1. The reference dates back to 24.05.2000. The second party submitted the statement Ext. 7 on 19.02.2001 and first party submitted the written statement Ext. 8 on 20.04.2005. Since then the second party has been absent on most of the dates and has also not preferred to lead evidence.

2. Thus it appears that the second party is not willing to prosecute the case. Therefore, the reference is disposed of in the absence of the evidence of the second party with an observation as under: “the demand of the Paschim Railway Karmachari Parishad, Ahmedabad against the D.R.M., Western Railway, Rajkot/ Carriage Depot Officer (M.G.), Western Railway, Ahmedabad in issuing charge sheets vide letter dated 02.10.1997, 10.02.1998 and 20.02.1998 is not just, valid and legal.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 21 फरवरी, 2017

का.आ. 473.—आौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट आौद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 113/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.02.2017 को प्राप्त हुआ था।

[सं. एल-12012/85/2005-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 21st February, 2017

S.O. 473.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 113/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 21.02.2017.

[No. L-12012/85/2005-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 20th December, 2016

Reference: (CGITA) No. 113/2005

1. The Branch Manager,
State Bank of India,
Industrial Estate, At. PO Bhilad,
Tah. Umargaon, Valsad (Gujarat)

2. The Deputy General Manager,
 State Bank of India,
 Zonal Office, 1st Floor, Paradise Complex,
 Sayajiganj,
 Vadodara (Gujarat) ...First Party

V/s

Mr. Uttambhai Vajirbhai Patel,
 C/o Zinabhai Patulbhai Patel,
 Mandir Falia, At. PO. Rajpuri Talat,
 Tal. Dharampur,
 Valsad (Gujarat) ...Second Party

For the First Party :

For the Second Party : Shri Ashwin J. Bhatt

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/85/2005-IR(B-I) dated 21.11.2005 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of State Bank of India in removing Shri Uttambhai Vajirbhai Patel from service w.e.f. 13.12.2003 is legal, just and proper? If not, to what relief the workman concerned is entitled to?”

1. The reference dates back to 21.11.2005. After receiving the notices, the second party submitted vakalatpatra Ext. 3 of his advocate Ashwin J. Bhatt and statement of claim Ext. 4 on 19.04.2006.
2. The first party also submitted written statement Ext. 22 on 15.02.2012 along with number of documents vide Ext. 24 but since then the second party has been absent and has refrained to lead evidence. Thus it appears that the second party is not willing to prosecute the reference.
3. Thus the reference in the absence of the second party evidence is disposed of with the observation as under: “the action of the management of State Bank of India in removing Shri Uttambhai Vajirbhai Patel from service w.e.f. 13.12.2003 is legal, just and proper.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 21 फरवरी, 2017

का.आ. 474.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 89/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.02.2017 को प्राप्त हुआ था।

[सं. एल-41012/38/2008-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 21st February, 2017

S.O. 474.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 89/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 21.02.2017.

[No. L-41012/38/2008-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 2nd December, 2016

Reference: (CGITA) No. 89/2010

The Divisional Railway Manager,
Western Railway, DRM Office,
Bhavnagar Para,
Bhavnagar (Gujarat)

...First Party

V/s

The Divisional Secretary,
Paschim Railway Karmachari Parishad,
134, Near Vishwakarma Mandir,
Opp. Railway Colony, Sabarmati,
Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri D.C. Khuva
For the Second Party : Shri B.K. Sharma

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41012/38/2008-IR(B-I) dated 28.04.2009 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Divisional Railway Manager(E), Western Railway, Bhavnagar, in not promoting Shri Kishorbhai Baldaniya, Motor Mechanic Grade II Scale Rs.950-1500 (RP) to scale Rs.1200-1800 w.e.f. 1992, is legal and justified? To what relief the workman concerned is entitled?”

1. The reference dates back to 28.04.2009. Both the parties submitted their vakalatpatra of their advocates and also submitted the statement of claim and written statement respectively on 01.03.2011 and 23.01.2012 respectively. Since then the second party workman has been absent and also did not prefer to lead evidence. Therefore it appears that the second party workman is not willing to prosecute the case.

2. Therefore, the reference is disposed of, in the absence of the second party with an observation as under: “the action of the management of Divisional Railway Manager(E), Western Railway, Bhavnagar, in not promoting Shri Kishorbhai Baldaniya, Motor Mechanic Grade II Scale Rs.950-1500 (RP) to scale Rs.1200-1800 w.e.f. 1992, is legal and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 21 फरवरी, 2017

का.आ. 475.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 39/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.02.2017 को प्राप्त हुआ था।

[सं. एल-41011/145/2010-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 21st February, 2017

S.O. 475.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2011) of the Central Government Industrial Tribunal-cum-

Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 21.02.2017.

[No. L-41011/145/2010-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 2nd December, 2016

Reference: (CGITA) No. 39/2011

1. The General Manager,
Western Railway, Churchgate,
Mumbai
2. The Divisional Railway Manager,
Western Railway, Divisional Office,
Pratapnagar, Baroda (Gujarat)
3. The Divisional Railway Manager,
Divisional Office, Ahmedabad Division,
Near Chamunda Bridge, Asarwa,
Ahmedabad (Gujarat)

...First Party

V/s

The President,
Paschim Railway Karmachari Parishad,
28/B, Narayan Park, B/h Chandkheda Railway Station,
Sabarmati,
Ahmedabad (Gujarat) – 380005

...Second Party

For the First Party : Shri Rajesh Singh and Shri N.J. Acharya

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/145/2010-IR(B-I) dated 29.04.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the Paschim Railway Karmachari Parishad, Ahmedabad to place the name of Shri R.R. Desai, OS Gr. II, working under Asst. Engineer, Western Railway, Nadiad in the seniority list maintained in Ahmedabad Division by the management of Divisional Railway Manager, Western Railway, Ahmedabad is legal and justified? To what relief the workman Shri R.R. Desai, OS Gr. II is entitled?”

1. The reference dates back to 29.04.2011. Second party submitted the statement of claim Ext. 3 on 28.07.2011. First party did not submit the written statement. The case was ordered to proceed ex parte against the first party but on 02.12.2016, Shri R.S. Sisodia, The President, Paschim Railway Karmachari Parishad, 28/B, Narayan Park, B/h Chandkheda Railway Station, Sabarmati, Ahmedabad did not press the dispute and also requested to withdraw the reference.
2. Thus the reference is disposed of as withdrawn.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 21 फरवरी, 2017

का.आ. 476.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 485/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.02.2017 को प्राप्त हुआ था।

[सं. एल-12012/431/2001-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 21st February, 2017

S.O. 476.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 485/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 21.02.2017.

[No. L-12012/431/2001-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 20th December, 2016

Reference: (CGITA) No. 485/2004

The Chief General Manager,
State Bank of India, 7th Floor, Bhadra, Lal Darwaja,
Ahmedabad (Gujarat) – 380001First Party

V/s

Shri Bhatt Gaurang Laxminarayan,
31, Mahudi Mahavir Society, Behind Shilpa Society,
Sabarmati, D Cabin,
Ahmedabad (Gujarat) – 394651Second Party

For the First Party : Shri B.K. Oza

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/431/2001-IR(B-I) dated 30.04.2002 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDEULE

“Whether the action of the management of management of the State Bank of India, Naranpura Branch, Ahmedabad in discontinuing the services of Shri Bhatt Guarang Laxminarayan w.e.f. 31.10.1996 without following the provisions of Section 25 (F), (G) & (H) of the Industrial Dispute Act, 1947 is justified? If not, what relief the concerned workman is entitled?”

1. The reference dates back to 30.04.2002. The second party submitted the statement of claim Ext. 3 on 22.09.2002 and the first party submitted the written statement Ext. 7 on 08.07.2003. Since then the second party has not been leading evidence. As a caution both the parties were issued fresh notices to appear on 29.06.2011 but second party did not respond for leading evidence. Thus it appears that the second party is not willing to prosecute the case.

2. Therefore, the reference is disposed of in the absence of the evidence of the second party with the observation as under: "the action of the management of management of the State Bank of India, Naranpura Branch, Ahmedabad in discontinuing the services of Shri Bhatt Guarang Laxminarayan w.e.f. 31.10.1996 without following the provisions of Section 25 (F), (G) & (H) of the Industrial Dispute Act, 1947 is justified."

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 21 फरवरी, 2017

का.आ. 477.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 62/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.02.2017 को प्राप्त हुआ था।

[सं. एल-41011/52/2014-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 21st February, 2017

S.O. 477.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 62/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 21.02.2017.

[No. L-41011/52/2014-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 19th December, 2016

Reference: (CGITA) No. 62/2014

1. The Divisional Railway Manager,
Western Railway,
Near Chamunda Bridge, Asarwa,
Ahmedabad (Gujarat)
2. The Sr. Divisional Mechanical Engineer,
Western Railway,
Near Chamunda Bridge, Asarwa,
Ahmedabad (Gujarat)

...First Party

V/s

The Joint Divisional Secretary,
Paschim Railway Karmachari Parishad,
28/B, Narayan Park,
Behind Chandkheda Railway Station,
Sabarmati, Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri Yogi K. Gadhia

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/52/2014-IR (B-I) dated 03.07.2014 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Divisional Railway Manager, Western Railway, Ahmedabad and others in not filling ST quota of Junior Engineer (II) and not including ST post in latest circular is justified? If not, to what relief the workman is entitled?”

1. The reference dates back to 03.07.2014. Shri Yogi K. Gadhia submitted his vakalatpatra Ext. 5 on behalf of the first party on 23.09.2016 but even after a lapse of more than 2 years, second party has not submitted the statement of claim despite service. Thus it appears that the second party is not willing to prosecute the case.

2. Thus the reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 21 फरवरी, 2017

का.आ. 478.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 98/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.02.2017 को प्राप्त हुआ था।

[सं. एल-41011/117/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 21st February, 2017

S.O. 478.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 98/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 21.02.2017.

[No. L-41011/117/2012-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 8th December, 2016

Reference: (CGITA) No. 98/2013

1. The General Manager,
Western Railway, Churchgate,
Mumbai – 400020
2. The Divisional Railway Manager,
Western Railway, Kothi Compound, Rajkot
3. The Divisional Railway Manager,
Western Railway, Near Chamunda Bridge,
Asarwa, Ahmedabad (Gujarat)

...First Party

V/s

The President,
 Paschim Railway Karmachari Parishad,
 28/B, Narayan Park,
 Behind Chandkheda Railway Station,
 Ahmedabad (Gujarat) – 382472

...Second Party

For the First Party :

For the Second Party : Shri R.S. Sisodiya

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/117/2012-IR(B-I) dated 16.05.2013 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the Union, Pashchim Railway Karmachari Parishad for appointment of Shri Firoz Khan, adopted son of Late Shri Shaywan Khan, Loco Foreman, Sabarmati on compassionate ground is legal and justified? If yes, what relief Shri Firoj Khan is entitled to?”

1. The reference dates back to 16.05.2013. Both the parties were served with the registered notice. The second party union requested to withdraw the reference and expressed unwillingness to prosecute the case.
2. The reference is disposed of as withdrawn.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 21 फरवरी, 2017

का.आ. 479.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सुमितोमो मित्सुई बैंकिंग कॉर्पोरेशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, दिल्ली के पंचाट (संदर्भ संख्या 159/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.02.2017 को प्राप्त हुआ था।

[सं. एल-12012/228/2005-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 21st February, 2017

S.O. 479.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 159/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the management of Sumotomo Mitsui Banking Corporation and their workmen, received by the Central Government on 21.02.2017.

[No. L-12012/228/2005-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No.159/2011

The General Secretary,
 All India Bank Staff Association (Regd.),
 34, Bank Enclave, Ring Road, Rajouri Garden,
 New Delhi-110 027

...Workman

Versus

The Chief Executive Officer,
 Sumotomo Mitsui Banking Corporation,
 15th Floor, Jolly Market,
 Chamber No.2, 225, Nariman Point,
 Mumbai-200 021

...Management

AWARD

A reference was received from Government of India, Ministry of Labour under sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 for adjudication of a dispute by Central Government Industrial Tribunal No.II, vide letter No.L-12012/228/2005-IR(B-1) dated 20.01.2006, the terms of which are as under:

‘Whether non-inclusion of pensionary benefit in the Early Separation Scheme announced for Delhi branch which have been opted by the workmen Shri Ajay Kumar and 7 others at par with the Early Separation Scheme announced for Mumbai branch of the same management i.e. Sumitomo Mitsui Banking Corporation amounts to unfair labour practice under the provisions of ID Act? If so, to what relief the workmen are entitled to and from which date?’

2. Background facts giving rise to the present reference, as mentioned in the statement of claim filed by the claimants herein are that Sumitomo Mitsui Banking Corporation had obtained licence from Reserve Bank of India and had opened its branches at New Delhi and Mumbai. Bank also recruited Indian staff for operation of their branches and almost 90% of its employees are Indian employees’, i.e. citizens of India. It is the case of the claimants herein that on 27.09.2004, the bank declared a scheme known as Early Separation Scheme 2004 (in short ESS) and persuaded, coerced and induced the employees of Delhi branch to accept the scheme on dotted lines. Management also threatened the employees that if they do not sign the required application for ESS, their services would be terminated and no claim/payment would be made to the claimants. Management has also assured that the claimants would be given all the facilities at par with Mumbai staff who accepted ESS. Thereafter, for the claimants, a dispute was raised by the Union on 04.10.2004. Thereafter, all employees for whom the dispute was raised by the Union were forced to sign application for ESS. Thereafter, union raised dispute vide letter dated 14.06.2005 addressed to the Assistant Labour Commissioner, as per Annexure B. In the meantime, more employees approached the union in regard to the illegal action of the management relating to non-payment of pension to them, which is Annexure C.

3. Management has forcibly relieved Mrs. Shalik Sabharwal on 18.12.2004 when she gave birth to a female baby on 15.12.2004 and had proceeded on maternity leave with effect from 14.12.2004. Thus, management acted in a malafide manner violating provisions of Maternity Benefit Act. Employees were not paid their dues on the date of their relieving and they had to struggle hard to make both ends meet.

4. There are averments that employees posted at Mumbai branch who had accepted ESS were given pension in addition to other benefits as paid to Delhi staff. Employees of Bombay branch were given pension as special case although they had not completed minimum pensionable period of 20 years. They were given pension irrespective of their length of service. Even employees having one year service was given pension ranging from Rs.3000-Rs.4000. The above facts clearly proves that management has nakedly and arbitrarily discriminated between Delhi and Mumbai employees and thus committed unfair labour practice as defined under Section 25-U of the Act.

5. When the union raised industrial dispute before the Assistant Labour Commissioner, New Delhi, management neither appeared nor submitted its reply duly signed by authorized persons. Their reply was submitted by unauthorized person, i.e. one of the partners of M/s Crawford Bayley & Co., which was objected to by the union. The union has also filed rejoinder before the Assistant Labour Commissioner on 15.06.2005, Annexure D. No representative of the management was settling the matter with the claimants. All reasonable efforts of the Assistant Labour Commissioner was turned down by the litigant agent of the management for malafide reason. The Assistant Labour Commissioner has also filed failure report to the Ministry of Labour vide letter dated 20.01.2016. Finally matter was referred for adjudication in the manner stated above.

6. Claim was demurred by the management, who has filed detailed reply to the statement of claim by taking various preliminary objections. It is averred that ESS, which is in the nature of VRS was offered by the management to its Delhi branch. Dispute was raised on 31.03.2005 when the respondent management Mitsui Sumitomo Banking Corporation ceased to exist. Later on industrial dispute was raised on behalf of 5 ex-employees of the above Bank. However, Annexure B attached to the statement of claim mentions 8 names. The said union has wrongly admitted to increasing the number to 13 by adding further 5 names of Annexure C to the statement of claim. It is further clear from the stand of the claimant employment of the workmen in Delhi branch at the relevant time was below 50. It is further alleged that Mumbai branch and Delhi branch had separate set of employees. They were not transferable from one branch to another. Terms and conditions of services were different in both the branches. There was no provision for pension in Delhi branch while pension was paid in Mumbai branch. Originally, complaint was filed by 5 employees as observed above and before the ALC negotiations were held, which ended in failure.

7. It is alleged on merits that the claimants had voluntarily opted for ESS and their applications were also accepted by the management. They were relieved from duty prior to 21.03.2005 as they have taken compensation under ESS. Now, the claimants cannot resile from the benefits which they have already obtained under ESS. All the employees

have given full and final settlement receipts, as such they are estopped from raising an industrial dispute before this Tribunal. So called industrial dispute was raised after appointed date on which the respondent management had ceased to exist. The present union has no locus standi in the matter as the said union has never operated in Delhi nor espoused the cause of the ex-employees after they ceased to be employees of the respondent management. No union can raise industrial dispute on behalf of an employee after he has ceased to be a workman and on the date of raising the dispute all the ex-employees had ceased to be workmen. There is no question of commission of unfair labour practice as matter is not covered under any of the items listed I the V Schedule. Finally, it was alleged that no relief can be granted to the claimants herein.

8. Rejoinder was also filed on behalf of the claimants herein wherein they have reasserted the stand taken in their statement of claim and denied material averments contained in the statement of defence.

9. Against this factual background, my learned predecessor vide order dated 20.01.2008 framed the following issues:

- (i) Whether there is industrial dispute between the management and the workmen in view of section 2(k) of the ID Act, 1947
- (ii) Whether the reference is maintainable?

10. Vide order No.Z-22019/6/2007-IRC-II dated 30.03.2010, the case was transferred to this Tribunal for adjudication.

11. Claimant, in order to prove their case, examined Mrs. Shalika Sabharwal, Shri Krishna Nand Mishra, Shri A Das Nathan as WW1, WW2 and WW3 respectively, and also tendered in evidence several documents. Management No.1, Sumitomo Mitsui Banking Corporation, in order to rebut the case of the claimant, examined Shri Yuichi Nishimura as MW1. No evidence was adduced on behalf of Standard Chartered Bank.

12. I have heard Shri N.K. Gupta, A/R for the claimant, Shri Jitesh Pandey, A/R for Sumitomo Mitsui Banking Corporation and Shri Rajnish Gaur, A/R for Standard Chartered Bank.

13. Both the issues, Issue No.(i) and (ii) are being taken up together for the purpose of discussion as they are legal in nature. However, during the course of arguments, learned A/R for the management submitted that Issue No.2 is required to be adjudicated first for the reason that there is no espousal of the case of the claimants herein through their union. As such, reference is not legally maintainable. In this regard, learned A/R for the management relied heavily upon the ratio of the case in management of Samrat Hotel Vs. Government of NCT of Delhi 2007 (2) LLJ 950 wherein the Hon'ble High Court of Delhi has dealt at length with the requirement of espousal by a union and sponsoring of the case of the workmen by such union to the Labour Commissioner or the Government. Reliance was also placed upon the case of Lord Krishna Textile Mills/National Textile Corporation Ltd. vs. Ram Pal Singh (2015) LLR 77, wherein Hon'ble High Court dealt with the question of individual dispute vi- a-vis Industrial Dispute holding that even an individual dispute not espoused by the union or substantial number of workmen is not an industrial dispute. Even if the party had not objected to the terms of reference, it would be sufficient ground not to entertain the objection of proper espousal. During the course of arguments, it was fairly admitted by the A/Rs for the respective parties that industrial disputes under Section 2(k) of the Act is to be raised before the authority concerned on collective basis because a dispute not espoused by appreciable number of workers of the union to which they belong is not an industrial dispute.

14. In the case in hand, admittedly present case has been filed through All India Bank Staff Association as is clear from the head-note of the statement of claim. Shri J.N. Kapoor is the General Secretary of the above union, who has signed the statement of claim. Admittedly, Shri J.N. Kapoor has not entered the witness box so as to depose regarding espousal and his status as General Secretary of the union. It was also brought to the notice of this Tribunal that in fact Shri Kapoor had expired by the time the case matured for evidence of the parties, as a result of which statement of Shri Kapoor could not be recorded. Even if it were so, there was no bar or impediment for the claimants who are alleged to be members of the above union to have examined any executive member of the body so as to prove that Shri Kapoor was the General Secretary of the union. Such an official could have also proved the fact that the cause of the claimants herein was taken up for consideration by the union and was discussed in the meeting of the union on a particular date. Statement of the witnesses WW1 to WW3 is totally silent and there is not even a whisper in the statement of any of the above witnesses regarding espousal of their case through the All India Bank Staff Association. Normally copy of the resolution/espousal certificate is filed alongwith the statement of claim so as to prove that the case was espoused through the union to which the workmen belong.

15. I have carefully gone through ratio of the law in Management of Hotel Samrat case (supra) wherein similar objection was taken by the management in a reference made under Section 10 of the Act regarding maintainability of the reference. Hon'ble High Court has upheld the objection as under:

‘In the instant case, there is no evidence on record of espousal of the dispute of the petitioner. There was no evidence that either the aggrieved workman had approached the union and asked the union to take up his cause or that union, at any point of time, or any appreciable number of employees, had taken up the cause of the workman with the management. If the union had passed a resolution or appreciable number of workmen had approached the union and raised the demand in respect of regularization of the workmen, it could be said that there was an espousal of the cause of the workman. Espousal can be expressed in many ways. The secretary of the union, who appeared as a witness has not uttered a single word that the union or any appreciable number of workmen had espoused the cause of the workmen. He simple stated that he had met the management (in his individual capacity). Under these circumstances, it could not be held that an industrial dispute existed between the employer and the workmen to enable the appropriate Government to make an order under Section 10 of the Industrial Disputes Act for referring it for adjudication to the Labour Court.

16. There are observations in the above judgement to the effect that the Tribunal has jurisdiction to adjudicate only an industrial dispute which is duly sponsored or espoused through their Union of the workman. Once the Tribunal came to the conclusion that case of the workman was not espoused, the Tribunal loses its jurisdiction to adjudicate the dispute since no industrial dispute exists.

17. In the above case, High Court has also dealt with the meaning of the expression ‘espousal of the cause’ as well as necessity for the same. It was held that espousal means that the dispute of individual workman is adopted by the union as its own dispute or large number of workmen give support to the cause of such dispute; Use of the expression ‘union’ merely indicates the union to which the employee belongs, even though it may be union of minority of workmen. Further, Section 10 of the Act authorizes the appropriate Government to refer to a Tribunal or a Labour Court only an industrial dispute which is duly espoused or sponsored by the union. Thus, there is considerable merit in the contention of the management that there is no espousal of the case as required under the law.

18. Yet again, in Lord Krishna Textile Mills case(supra) Hon’ble High Court even went to the extent of observing that the issue of espousal goes to the root of the matter and an industrial Tribunal or Labour Court is required to adjudicate it first before giving findings on merits of the case. Thus, a dispute would become an industrial dispute only where there are sufficient workmen involved when it is espoused through the union or substantial number of fellow workmen irrespective of the fact whether the union is recognized or not. In the case in hand, there is no evidence on record to suggest that case of the workmen herein was ever taken up for discussion by the union, i.e All India Bank Staff Association, nor there is even a whisper in the statement of any of the witness examined on behalf of the claimant. Therefore, in the absence of any evidence, oral or documentary, on record it is held that there was no espousal of the case of the workman regarding the present dispute through its union, All India Bank Staff Association.

19. Be it clarified here that fate of the present case has been decided purely from legal angle qua maintainability of the case for want of espousal through the union of the claimants and there is no adjudication of the case on merits regarding the question claimants herein are entitled for pension and other benefits like their counterparts who are employed in Mumbai branch. The Tribunal is not required to touch merits as held in Load Krishna Mills case (supra) when the reference has been held to be not maintainable.

20. As a sequel to my above discussion made herein, it is held that in the absence of evidence, oral or documentary, regarding espousal of the cause of the claimants through their union, the same is held to be illegal and not maintainable. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : February 10, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 21 फरवरी, 2017

का.आ. 480.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्धारा 1 मार्च, 2017 को उस तारीख के रूप में नियत करती है, जिसे उक्त अधिनियम के अध्याय IV (धारा 44 व 45 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) तथा अध्याय V और VI [धारा 76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी हैं] के उपबंध पश्चिम बंगाल राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

“बीरभूम जिले (पश्चिम बंगाल) के सभी क्षेत्र/संपूर्ण क्षेत्र”।

[सं. एस-38013/01/2017-एस.एस.-I]

अजय मलिक, अवर सचिव

New Delhi, the 21st February, 2017

S.O. 480.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st March, 2017 as the date on which the provisions of Chapter-IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following Areas in the State of West Bengal namely :—

“All the areas of the District Birbhum, West Bengal.”

[No. S-38013/01/2017-S.S.-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 21 फरवरी, 2017

का.आ. 481.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 मार्च, 2017 को उस तारीख के रूप में नियत करती है, जिसे उक्त अधिनियम के अध्याय IV (धारा 44 व 45 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) तथा अध्याय V और VI [धारा 76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी हैं] के उपबंध पश्चिम बंगाल राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

“ पश्चिम मिदनापुर एवं बर्द्वान जिले (पश्चिम बंगाल) के सभी क्षेत्र/संपूर्ण क्षेत्र” ।

[सं. एस-38013/01/2017-एस.एस.-I]

अजय मलिक, अवर सचिव

New Delhi, the 21st February, 2017

S.O. 481.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st March, 2017 as the date on which the provisions of Chapter-IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following Areas in the State of West Bengal namely :—

“All the areas of the District Paschim Midnapore and Burdwan, West Bengal.”

[No. S-38013/01/2017-S.S.-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 21 फरवरी, 2017

का.आ. 482.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 मार्च, 2017 को उस तारीख के रूप में नियत करती है, जिसे उक्त अधिनियम के अध्याय IV (धारा 44 व 45 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) तथा अध्याय V और VI [धारा 76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी हैं] के उपबंध हिमाचल प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

क्रमांक	राज्यों के नाम	जिले का नाम
1.	हिमाचल प्रदेश	ऊना
2.	हिमाचल प्रदेश	कांगड़ा
3.	हिमाचल प्रदेश	मण्डी
4.	हिमाचल प्रदेश	सिरमौर
5.	हिमाचल प्रदेश	शिमला
6.	हिमाचल प्रदेश	सोलन
7.	हिमाचल प्रदेश	बिलासपुर

[सं. एस-38013/05/2017-एस.एस.-I]

अजय मलिक, अवर सचिव

New Delhi, the 21st February, 2017

S.O. 482.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st March, 2017 as the date on which the provisions of Chapter-IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following Areas in the State of Himachal Pradesh namely :—

Sl.	Name of States	Name of District
1.	Himachal Pradesh	Una
2.	Himachal Pradesh	Kangra
3.	Himachal Pradesh	Mandi
4.	Himachal Pradesh	Sirmaur
5.	Himachal Pradesh	Shimla
6.	Himachal Pradesh	Solan
7.	Himachal Pradesh	Bilaspur

[No. S-38013/05/2017-S.S.-I]

AJAY MALIK, Under Secy.